# THIS EXHIBIT HAS BEEN REDACTED IN ITS ENTIRETY

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1 Joseph R. Re (Bar No. 134479) joseph.re@knobbe.com 2 Stephen C. Jensen (Bar No. 149894) stephen.jensen@knobbe.com 3 Irfan A. Lateef (Bar No. 204004) 4 irfan.lateef@knobbe.com 5 Brian C. Claassen (Bar No. 253627) brian.claassen@knobbe.com 6 KNOBBE, MARTENS, OLSON & BEAR, LLP 2040 Main Street, Fourteenth Floor 7 Irvine, California 92614 8 Telephone: (949) 760-0404 9 Facsimile: (949) 760-9502 10 Attorneys for Plaintiffs, Masimo Corporation and 11 Cercacor Laboratories, Inc. 12 IN THE UNITED STATES DISTRICT COURT 13 FOR THE CENTRAL DISTRICT OF CALIFORNIA 14 **SOUTHERN DIVISION** 15 16 Case No. 8:18-CV-02001-JVS-JDE 17 MASIMO CORPORATION, a Delaware corporation; and **DECLARATION OF** 18 CERCACOR LABORATORIES, INC., EPHEN C. JENSEN IN SUPPORT OF PLAINTIFFS' 19 a Delaware corporation, MOTION FOR ENTRY OF A PROTECTIVE ORDER 20 Plaintiffs/Counterdefendants. 21 [Discovery Document: Referred v. 22 to Magistrate Judge John D. Early] 23 TRUE WEARABLES, INC., a Hearing: April 2, 2020 Delaware corporation; and 24 Time: 10:00 a.m. MARCELO LAMEGO, an individual, Ctrm: 6A, Sixth Floor 2.5 Discovery Cutoff: 04/01/2020 Defendants/Counterclaimants. 26 Pre-Trial Conf.: 08/03/2020 Trial: 08/18/2020 27

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### I, Stephen C. Jensen, hereby declare:

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- I am a partner in the law firm of Knobbe, Martens, Olson & Bear, 1. LLP, and I am licensed to practice law in the State of California. I am a member of the bar of this Court, and counsel of record for Plaintiffs and Masimo Counterdefendants Corporation ("Masimo") and Cercacor Laboratories, ("Cercacor") (collectively "Plaintiffs") Inc. in the above-captioned action. I have personal knowledge of the matters set forth herein, and if I am called upon to testify, I could testify competently thereto.
- 2. I submit this Declaration in support of Plaintiffs' Motion for Entry of a Protective Order. I understand that Defendants seek to preclude my access to materials designated as "CONFIDENTIAL ATTORNEYS' EYES ONLY" or "RESTRICTED CONFIDENTIAL SOURCE CODE" (referred to herein as "Designated Materials").
- 3. I have been a lawyer at Knobbe Martens since graduating from law school in 1990. I have been a partner since 1994.
- 4. Starting in about 1994, I became Masimo's primary outside patent attorney. I have represented Masimo continuously since then. Initially, I managed Masimo's intellectual property, including patent prosecution.
- 5. Around 2003 or 2004, after training others at Knobbe, I transferred the patent prosecution responsibility to other partners at Knobbe Martens. Dr. Lamego is fully aware that, since that time, other partners from Knobbe Martens supervise and are responsible for patent prosecution.
- 6. Masimo and Cercacor have relied on my advice in legal matters related to intellectual property and technology. For the last 20 years, beginning with Masimo's first patent litigation in 1999, I have led Masimo's litigation teams.
- 7. I have represented Masimo in many patent lawsuits as well as many other types of lawsuits, including:

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KOB:

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- Shandong Lihong Technology Limited Corp v. Masimo Corporation and DOES 1-10, Superior Court of the State of California, County of Orange,
- Case No. 30-2018-01002779-CU-BT-CJC;
- Silkeen LLC v. Masimo Corporation, C.A. No. 1:17-cv-01030-RGA (D.

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- U.S. Ex. Rel Ruhe, Serwitz, and Catala v. Masimo Corporation, 2:10-cv-08169-CJC-VBK (C.D. Cal);
- Physicians Healthsource, Inc. et al. v. Masimo Corporation, Case No. 8:14-cv-00001 JVS (ADSx) (C.D. Cal);
- Masimo Corporation v. James Welch, David Hunt Case No. 30-2013-00659172 (Superior Ct. of Cal., Orange County); and
- Masimo Corporation v. Sotera Wireless, Inc. et al., Case No. 3-19-cv-01100 (S.D. Cal.).

Many of these cases have included claims by and against Masimo's direct competitors including both small organizations and large multi-national organizations.

- 8. I have served as outside counsel, including litigation counsel, for Cercacor since 2008, and have represented Cercacor in multiple lawsuits during that time, including:
  - Essential Medical Devices, Inc. v. Masimo Corp. et al., Case No. 1-11-cv-00734 (D. Del.); and
  - Dominion Assets LLC v. Masimo Corp. et al., Case Nos. 5-12-cv-02773 & 5-14-cv-03002 (N.D. Cal.).
- 9. In view of my long history with Masimo and Cercacor, parties in prior cases have also sought to restrict my access to confidential materials. However, in all prior litigation for Masimo and Cercacor, including cases between key competitors, courts have allowed me to access all documents and information, just like any member of the litigation teams I lead. That includes confidential, attorneys'-eyes-only materials, under the respective protective orders.
- 10. Like any litigation attorney in the technology field, I am accustomed to abiding by protective orders. That includes taking precautions for

viewing designated materials, and ensuring that I never reveal those materials, and the information contained therein, to my clients. In particular, I would not engage in, and am accustomed to simply abstaining from, any discussion that could arguably implicate any information revealed to me under a protective order. This is the case with any litigation client where I receive information subject to a protective order.

- 11. Masimo and Cercacor rely on me to lead various litigation teams by leveraging my extensive understanding of Masimo's and Cercacor's technology to evaluate the complex legal issues that arise in their technology-related litigations. The companies rely on me to make important litigation decisions in consultation with my litigation teams, based on my long-time experience with these clients, particularly when a protective order prevents disclosure to the clients of the underlying reasons for such decisions. I discuss and coordinate strategy for all litigation cases with my litigation teams, and they rely heavily on my guidance and strategy, particularly with respect to complex technical subject matter. I do not currently make business decisions for Masimo or Cercacor. My current role is outside legal.
- 12. Masimo and Cercacor trust me to provide critical legal advice and legal strategy. That trust has grown through years of my knowledge of their technology, business, trade secrets, and the complex legal issues concerning these areas. No other lawyer at my firm has the same history and breadth of understanding of Masimo's and Cercacor's technology, their legal strategies, their principals and their legal goals.
- 13. Masimo's stock is publicly traded. I am aware that Knobbe lawyers have held shares in the last two years or currently hold shares of Masimo. Lawyers at Knobbe also likely own Masimo stock through mutual funds, retirement funds, index funds, and exchange traded funds. However, I am not aware of any lawyer at Knobbe who holds a significant number of shares relative

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to the size of Masimo. My firm also does not currently hold, and has not held in the past two years, shares of Masimo or Cercacor stock. I am not aware of any lawyer at Knobbe who has a significant number of shares of Cercacor relative to the number of shares outstanding.

- 14. I have reviewed the declaration of Marcelo Lamego that Defendants have submitted in support of Defendants' position in the parties' Joint Stipulation. Several paragraphs of the declaration purport to recount the legal advice I provided to Masimo in connection with my past service as outside intellectual property counsel. I find it unsettling that any opposing counsel would attempt to reveal attorney-client privileged information in a public court filing. Regardless, I have identified significant factual inaccuracies in Lamego's recollection of the events discussed in his declaration.
- 15. For example, in paragraphs 3, 4 and 5 of his declaration, Lamego identifies what he describes as weekly "Patent Meetings" that I participated in at Masimo. Although I am not sure what Lamego is referring to as weekly "Patent Meetings," I have participated in meetings relating to patents. However, I have not regularly participated in patent prosecution meetings at Masimo since I believe about 2003 or 2004, because I transferred Masimo patent prosecution to other partners at Knobbe Martens at about that time. Those other lawyers have handled patent disclosure meetings and patent prosecution for Cercacor and Masimo since that time. I have not supervised Masimo's or Cercacor's patent prosecution efforts for many years. Lamego was fully aware of this change, and therefore, his recounting very outdated information to this Court is troubling to me, and appears to be a conscious attempt to mislead the court to obtain a litigation advantage. Team members that normally coordinate on all issues with me have not been able to communicate freely with me because my teams have been operating under Defendants' proposed restriction to keep the case moving.
  - 16. In view of my (now long) past role as an outside patent prosecution

attorney for Masimo, I have generally agreed to be subject to, and have abided by, patent prosecution bars during the pendency of the underlying lawsuits and for limited periods of time following final resolutions of cases. In this way, I have eliminated the risk of inadvertent disclosure of the opposing party's confidential materials in connection with Masimo's ongoing patent prosecution, just like any other member of the litigation team with access to confidential materials. I have already agreed to a similar restriction in this case.

- 17. In paragraph 5 of his declaration, Lamego recalls my past involvement in presentations concerning Masimo's intellectual property positions. Any such legal analyses were based on information about third-party products exclusively based on public information.
- 18. In paragraph 6 of his declaration, Lamego purports to describe legal advice I provided to Masimo in connection with a potential patent acquisition, privileged information Lamego has no authority to reveal. Lamego's recollection of events is inaccurate. I am unable to correct these inaccuracies without disclosing my Masimo's privileged communications. However, Masimo has authorized me to submit my testimony for *in camera* review, if the Court desires further explanation. The advice I provided was legal advice, but was not based on any confidential information of a third party.
- 19. In paragraphs 7 and 9 of his declaration, Lamego states that he has observed me provide legal advice to Masimo's CEO on a range of issues. In my role as outside counsel for Masimo, providing legal advice to Masimo's CEO is expected as it would be of any outside counsel.
- 20. In my current role as outside counsel, I do not make competitive decisions for Masimo or Cercacor. Nothing about my role requires that I provide advice on competitive pricing relative to True Wearables. Nothing about my role requires that I provide technical design advice for Cercacor or Masimo, much less that would in any way involve anything relevant to True

Wearables. Although I provide legal advice relating to various aspects of Masimo's and Cercacor's business, as described above, such advice is legal advice.

- 21. I have served, in a volunteer capacity, on the Board of Directors for the Masimo Foundation for Ethics, Innovation and Competition in Healthcare since August 7, 2015. The Masimo Foundation is a non-profit organization that invests in programs and initiatives designed to improve patient safety and outcomes, promote efficient and cost-effective healthcare delivery, and provide advanced healthcare to people worldwide who may not otherwise have access to lifesaving technologies. The Masimo Foundation does not develop, sell or set pricing for products or technology. Accordingly, there is no relationship to this charitable foundation and the Defendants' Designated Materials.
- 22. I have served as a member of the Board of Directors for Cercacor since January 2013. As with all members of the Board, my role is to provide overall corporate governance and monitor the activities of Cercacor. I do not expect any competitive business decisions at any board meeting, much less that would relate in any way to True Wearables' Designated Materials.
- 23. However, if discussions of any such issues do arise at a board meeting, I would have no difficulty abiding by the proposed Protective Order. If a business decision or even a discussion did arise that could arguably be affected by information I have received under a protective order, I would simply abstain from providing any input on that matter. Abstaining from certain discussions and decisions is a well-known and common practice among the board members with whom I interact. Indeed, my fiduciary obligation to the Board would not be compromised by abstaining from certain discussions and decisions, as this is a common practice by board members. I have personally abstained from discussions if confidential information I have been exposed to in litigation or otherwise is in any way implicated by the discussion. Other board members

abstain when confidential information they have from third parties could be implicated by a discussion. This common practice has always been met with immediate understanding by all involved in those discussions.

- 24. If, however, the Court believes that my board service conflicts in any way with my access to True Wearables' Designated Materials, I am prepared to resign from the Board to resolve the issue. My goal is simply to ensure that my clients, Masimo and Cercacor, receive the best possible legal representation from me as the leader of their outside litigation teams, as they expect and have become accustomed to over the last 20 years. Cercacor and Masimo prioritize my leading of the litigation teams well above my Cercacor board service.
- 25. It is common for me to be asked to attend board of directors meetings, aside from Cercacor, as litigation team leader. This is customary with most corporate clients, regardless of whether I or any lawyer is on any board. When significant litigation involving a company's important intellectual property or technology is involved, boards of directors frequently desire continual updates from the litigation team leader. This is routine.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on March 9, 2020 at Irvine, California.

<u>/s/ Stephen C. Jensen</u> Stephen C. Jensen

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#### UNITED STATES DISTRICT COURT

#### **CENTRAL DISTRICT OF CALIFORNIA**

#### **Notice of Electronic Filing**

The following transaction was entered by Claassen, Brian on 3/16/2020 at 5:21 PM PDT and filed on 3/16/2020

**Case Name:** Masimo Corporation et al v. True Wearables, Inc. et al

**Case Number:** 8:18-cv-02001-JVS-JDE **Filer:** Cercacor Laboratories, Inc.

Masimo Corporation

**Document Number: 82** 

#### **Docket Text:**

JOINT STIPULATION to APPLICATION to file document *Declaration of Marcelo Lamego Exhibit K to the Fletcher Declaration and Portions of the Joint Stipulation* under seal[80] filed by Counter Defendants Cercacor Laboratories, Inc., Masimo Corporation, Plaintiffs Cercacor Laboratories, Inc., Masimo Corporation. (Attachments: # (1) [REDACTED] Joint Stipulation, # (2) Declaration Stephen Jensen, # (3) Declaration Joe Kiani, # (4) Declaration Brian Claassen, # (5) Exhibit A-J, # (6) Declaration Anthony Allen, # (7) Declaration Marcelo Lamego, # (8) Declaration Ryan Fletcher, # (9) Exhibit K and L, # (10) Proposed Order)(Claassen, Brian)

#### 8:18-cv-02001-JVS-JDE Notice has been electronically mailed to:

Amanda Rose Washton a.washton@conklelaw.com, awashton@hotmail.com, support@conklelaw.com

Brian Christopher Claassen brian.claassen@kmob.com, KnobbeAdmin@ecf.courtdrive.com, litigation@knobbe.com Irfan A Lateef ial@kmob.com, litigation@kmob.com

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## 8:18-cv-02001-JVS-JDE Notice has been delivered by First Class U. S. Mail or by other means BY THE FILER to :

Andrew T Pouzeshi Merchant and Gould PC 1801 California Street Suite 3300 Denver, CO 80202

The following document(s) are associated with this transaction:

**Document description:** Main Document

**Original filename:**C:\fakepath\2020-03-16 Plaintiffs' Shortened Notice of Motion and Motion.pdf

#### **Electronic document Stamp:**

[STAMP cacdStamp\_ID=1020290914 [Date=3/16/2020] [FileNumber=29474417-0 ] [30ecd45b6994ad633812c03f44101f575366f5a3ba3fae9b1bfdbd477925a3857a9 37ad2ba1106da6bc8a48ceac59d9dd5d308a4f0aeebc9a6b9d9e139fda885]]

**Document description:** [REDACTED] Joint Stipulation

**Original filename:**C:\fakepath\2020-03-16 [REDACTED] Joint Stipulation Accompanying Plaintiffs' Motion for Entry of Protective Order\_Redacted.pdf

#### **Electronic document Stamp:**

[STAMP cacdStamp\_ID=1020290914 [Date=3/16/2020] [FileNumber=29474417-1] [5c6efcdba66e5536445a68cbafc4d69e61d7886ad693348ef07cf73ed52c842e90f 03d511838bdac79533273228223a6cdace19eae80af7d9397e3b49f47df55]]

**Document description:** Declaration Stephen Jensen

**Original filename:**C:\fakepath\2020-03-09 Declaration of Stephen Jensen Declaration in Support of the Protective Order.pdf

### **Electronic document Stamp:**

[STAMP cacdStamp\_ID=1020290914 [Date=3/16/2020] [FileNumber=29474417-2 ] [aac2f8a0e6086e0bd7ef934a4369b821d9ee8feec7a0695d4121da97bf367c84c76 adeb5e055b3d09161c767ba88682b4b335f95e4cd5d99c3acdc51552a6d2b]]

**Document description:** Declaration Joe Kiani

**Original filename:**C:\fakepath\2020-03-09 Declaration of Joe Kiani in Support of Masimo's Motion for Protective Order [Correct Version].pdf

#### **Electronic document Stamp:**

[STAMP cacdStamp\_ID=1020290914 [Date=3/16/2020] [FileNumber=29474417-3 ] [7ef6e427f2637de0ac17dcf431952b04b43d398232ed919a6ba64a7c12e58981296 53704398d6d389e2dbacc18f3fa0eaa1505536a470fecb2f16caaaf13c71d]]

**Document description:** Declaration Brian Claassen

**Original filename:**C:\fakepath\2020-03-09 Declaration of Brian Claassen in Support of Protective Order.pdf

#### **Electronic document Stamp:**

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**Document description:**Exhibit A-J

**Original filename:**C:\fakepath\Exhibits A-J [COMBINED] to BCC Declaration.pdf **Electronic document Stamp:** 

[STAMP cacdStamp\_ID=1020290914 [Date=3/16/2020] [FileNumber=29474417-5] [45ad8ff1875c0974067cf3cfc833494eed2e37fcfa0f7f8cb90b2b384df97c7b8db 7f98a0629383868fe0b7d4e6bde8cd6d83ef14787c37c8f831f9a1efde78e]]

**Document description:** Declaration Anthony Allen

**Original filename:**C:\fakepath\2020-03-11 Declaration of Anthony Allan iso Joint Statement.PDF

#### **Electronic document Stamp:**

[STAMP cacdStamp\_ID=1020290914 [Date=3/16/2020] [FileNumber=29474417-6] [7b96c7130c24d3f30342db2677973f73078dbe59b6517b7830c6d57cb98d0ab26e8 2ebb6b9627f5d4ef0a7109d954e5749634829a0c21a617fd2b35611feb7b4]]

**Document description:** Declaration Marcelo Lamego

**Original filename:**C:\fakepath\[REDACTED] Lamego Declaration iso Joint Statement.pdf **Electronic document Stamp:** 

[STAMP cacdStamp\_ID=1020290914 [Date=3/16/2020] [FileNumber=29474417-7] [b567520832eb60f182fde6a4a5d5481f310ec297d0cbee4d644527d653f9c29587e 7c658faa6ff4f003b9464bdd259ae0f02f4d43354d1edf4b6efb5d393d1b9]]

**Document description:** Declaration Ryan Fletcher

**Original filename:**C:\fakepath\2020 03 16 - Declaration of Fletcher ISO Joint Statement.pdf **Electronic document Stamp:** 

[STAMP cacdStamp\_ID=1020290914 [Date=3/16/2020] [FileNumber=29474417-8] [25c297303fe2aa366b1e3cd9b27b5f4cfe2087d28a7534267e9f4d7276a070012c3 c8ae2fe6478967738f98589c0f0bebdf17cb4e61b1ecfa7ea83e8c46b27a4]]

**Document description:**Exhibit K and L

**Original filename:**C:\fakepath\[PUBLIC] Exhibits K and L to the Declaration of Ryan Fletcher.pdf

### **Electronic document Stamp:**

[STAMP cacdStamp\_ID=1020290914 [Date=3/16/2020] [FileNumber=29474417-9] [5904ad5ff4d1f924cac3f848aa3d9c17edc5b80b7352b1fa34e41455c0ac012a33d 2cce6f6915fe617bd190c5eefc02c9b24943bbffac8c1ff1a612742c50d51]]

**Document description:**Proposed Order

**Original filename:**C:\fakepath\[Proposed] Order Granting Notice of Motion and Motion.pdf **Electronic document Stamp:** 

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12	Telephone: (858) 707-4000; Facsimile: (8	58) 707-4001	
13	Attorneys for Plaintiffs, Masimo Corporation and Cercacor Laboratories, Inc.		
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16 17 18 19 20 21 22 23 24 25	FOR THE CENTRAL DESOUTHER  MASIMO CORPORATION, a Delaware corporation; and CERCACOR LABORATORIES, INC., a Delaware corporation  Plaintiffs,  v.  APPLE INC., a California corporation	ISTRICT OF CALIF RN DIVISION  Case No. 8:20-cv-00  DECLARATION (COMPANIES)  PLAINTIFFS' MOON PROTECTIVE OR  Hearing Date: Hearing Time: Courtroom: Discovery Cutoff: Pretrial Conference: Trial:	FORNIA  0048-JVS-JDE  OF STEPHEN C. ORT OF TION FOR DER  July 23, 2020 10 am 6A  July 5, 2021 March 21, 2022
16 17 18 19 20 21 22 23 24 25 26	FOR THE CENTRAL DESOUTHER  MASIMO CORPORATION, a Delaware corporation; and CERCACOR LABORATORIES, INC., a Delaware corporation  Plaintiffs,  v.  APPLE INC., a California corporation	ISTRICT OF CALIF RN DIVISION  Case No. 8:20-cv-00  DECLARATION (COMPANIES)  PLAINTIFFS' MOON PROTECTIVE OR  Hearing Date: Hearing Time: Courtroom: Discovery Cutoff: Pretrial Conference: Trial:	FORNIA  0048-JVS-JDE  OF STEPHEN C. ORT OF TION FOR DER  July 23, 2020 10 am 6A  July 5, 2021 March 21, 2022

- 1. I am an attorney with the law firm of Knobbe, Martens, Olson & Bear, LLP, and I am licensed to practice law in the State of California. I am counsel of record for Plaintiffs Masimo Corporation ("Masimo") and Cercacor Laboratories, Inc. ("Cercacor") in the above-captioned action. I have personal knowledge of the matters set forth herein, and, if I am called upon to testify, I could and would testify competently thereto.
- 2. I have been a lawyer at Knobbe Martens since graduating from law school in 1990. I have been a partner since 1994. Starting in about 1994, I became Masimo's primary outside patent attorney. I have represented Masimo continuously since then. Initially, I managed Masimo's intellectual property, including patent prosecution. Around 2003 or 2004, after training others at Knobbe, I transferred the patent prosecution responsibility to other partners at Knobbe Martens.
- 3. I have represented Masimo and Cercacor in many patent lawsuits as well as many other types of lawsuits, including:
  - Mallinckrodt Inc. v. Masimo Corp., Case No. 2:00-cv-06506 (C.D. Cal.);
  - Masimo Corp. v. Mallinckrodt Inc., Case Nos. 8:01-cv-00638 and 2:01-cv-07292 (C.D. Cal.);
  - Nellcor Puritan v. Masimo Corp., Case Nos. 8:02-cv-01133 and 2:03-cv-00603 (C.D. Cal.);
  - *Masimo Corp. v. Jay*, Case No. 8:07-cv-01163 (C.D. Cal.);
  - *Masimo Corp. v. Philips Electronics N. Am. Corp.*, Case Nos. 1:09-cv-00080, 1:11-cv-00742, and 1:16-cv-00137 (D. Del.);
  - Hygia Health Services, Inc. v. Masimo Corp., Case No. 2:09-cv-00885 (N.D. Al.);
  - Essential Medical Devices, Inc. v. Masimo Corp., Case No. 1:11-cv-00734 (D. Del.);

- Dominion Assets LLC v. Masimo Corp., Case Nos. 5:12-cv-02773 and 5:14-cv-3002 (N.D. Cal.);
- Masimo Corp. v. Mindray DS USA, Inc., Case Nos. 8:12-cv-02206 (C.D. Cal.), 2:15-cv-00457 (D. N.J.), and 2:15-cv-06900 (D. N.J.);
- Masimo Corp. v. Shenzhen Mindray Bio-Medical Tech. Co. Ltd., 12-cv-02206 (C.D. Cal.)
- *Masimo Corporation v. Nova Biomedical Corp.*, Jams International Arbitration, Reference No. 1220045324;
- *Christian Lewis v. Moore*, Case No. 15-13979 (11<sup>th</sup> Cir.), appeal from District Court Case No. 2:13-cv-00733;
- Shandong Lihong Technology Limited Corp v. Masimo Corporation, Case No. 30-2018-01002779-CU-BT-CJC (Cal. Sup. Ct.);
- Silkeen LLC v. Masimo Corp., Case No. 1:17-cv-01030 (D. Del);
- U.S. Ex. Rel Ruhe v. Masimo Corp., Case No. 2:10-cv-08169 (C.D. Cal);
- Physicians Healthsource, Inc. v. Masimo Corp., Case No. 8:14-cv-00001 (C.D. Cal);
- Masimo Corp. v. Sotera Wireless, Inc., Case No. 30-2013-00659172 (Cal. Sup. Ct.);
- *Masimo Corp. v. Sotera Wireless, Inc.*, Case No. 3:19-cv-01100 (S.D. Cal.); and
- *Masimo Corp. v. True Wearables, Inc.*, Case No. 8:18-cv-02001-JVS-JDE (C.D. Cal.).

Many of these cases have included claims by and against Masimo's direct competitors, including both small organizations and large multi-national organizations.

4. In view of my long history with Masimo and Cercacor, parties in prior cases have also sought to restrict my access to confidential materials. However, in all prior litigation for Masimo and Cercacor, including cases

between key competitors, courts have allowed me to access all documents and information, including confidential, attorneys' eyes only materials, under the respective protective orders.

- 5. Like any litigation attorney in the technology field, I am accustomed to abiding by protective orders. That includes taking precautions for viewing designated materials, and ensuring that I never reveal those materials, and the information contained therein, to my clients. In particular, I would not engage in, and am accustomed to simply abstaining from, any discussion that could arguably implicate any information revealed to me under a protective order. This is the case with any litigation client where I receive information subject to a protective order.
- 6. I do not currently make business decisions for Masimo or Cercacor. My current role is outside legal. Masimo and Cercacor rely on me to lead various litigation teams by leveraging my extensive understanding of Masimo's and Cercacor's technology to evaluate the complex legal issues that arise in their technology-related litigations. The companies rely on me to make important litigation decisions in consultation with my litigation teams, based on my long-time experience with these clients, particularly when a protective order prevents disclosure to the clients of the underlying reasons for such decisions. I discuss and coordinate strategy for all litigation cases with my litigation teams, and they rely heavily on my guidance and strategy, particularly with respect to complex technical subject matter.
- 7. Masimo and Cercacor trust me to provide critical legal advice and legal strategy. That trust has grown through years due to my knowledge of their technology, business, trade secrets, and the complex legal issues concerning these areas. No other lawyer at my firm has the same history and breadth of understanding of Masimo's and Cercacor's technology, their legal strategies, their principles, and their legal goals.

- 8. Masimo's stock is publicly traded. I am aware that Knobbe lawyers have held shares in the last two years or currently hold shares of Masimo. Lawyers at Knobbe also likely own Masimo stock through mutual funds, retirement funds, index funds, and exchange traded funds. However, I am not aware of any lawyer at Knobbe who holds a significant number of shares relative to the size of Masimo. My firm also does not currently hold, and has not held in the past two years, shares of Masimo or Cercacor stock. I am not aware of any lawyer at Knobbe who has a significant number of shares of Cercacor relative to the number of shares outstanding.
- 9. In view of my (now long) past role as an outside patent prosecution attorney for Masimo, I have generally agreed to be subject to, and have abided by, patent prosecution bars during the pendency of the underlying lawsuits and for limited periods of time following final resolutions of cases. In this way, I have eliminated the risk of inadvertent disclosure of the opposing party's confidential materials in connection with Masimo's ongoing patent prosecution, just like any other member of the litigation team with access to confidential materials. I have already agreed to a similar restriction in this case.
- 10. In my current role as outside counsel, I do not make competitive decisions for Masimo or Cercacor. Nothing about my role requires that I provide advice on competitive pricing relative to Apple. Nothing about my role requires that I provide technical design advice for Cercacor or Masimo. I provide legal advice relating to various aspects of Masimo's and Cercacor's business, as described above.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on June 19, 2020, in Tustin, California.

/s/ Stephen C. Jensen

## UNITED STATES INTERNATIONAL TRADE COMMISSION WASHINGTON, D.C.

Before the Honorable Charles Bullock Chief Administrative Law Judge

In the Matter of

CERTAIN LIGHT-BASED PHYSIOLOGICAL MEASUREMENT DEVICES AND COMPONENTS THEREOF

Inv. No. 337-TA-1276

DECLARATION OF STEPHEN C. JENSEN IN SUPPORT OF COMPLAINANTS' OPPOSITION TO RESPONDENT'S MOTION TO EXCLUDE STEPHEN JENSEN FROM ACCESS TO APPLE'S CONFIDENTIAL BUSINESS INFORMATION UNDER THE PROTECTIVE ORDER (ORDER NO. 1)

- I, Stephen C. Jensen, hereby declare:
- 1. I am a partner in the law firm of Knobbe, Martens, Olson & Bear, LLP, and I am licensed to practice law in the State of California. I am counsel of record for Complainants Masimo Corporation ("Masimo") and Cercacor Laboratories, Inc. ("Cercacor") (collectively, "Complainants") in the above-captioned Investigation. I have personal knowledge of the matters set forth herein, and if I am called upon to testify, I could testify competently thereto.
- 2. I submit this Declaration in support of Complainant's Opposition to Respondent Apple Inc.'s ("Apple") Motion to Exclude Stephen Jensen from Access to Apple's Confidential Business Information Under the Protective Order. I understand Apple seeks to preclude my access to its confidential business information ("CBI") in this Investigation.
- 3. I have been a lawyer at Knobbe Martens since graduating from law school in 1990. I have been a partner since 1994.
- 4. Starting in about 1994, I became Masimo's primary outside patent attorney. I have represented Masimo continuously since then. Initially, I managed Masimo's intellectual property, including patent prosecution. Around 2003 or 2004, after training others at Knobbe, I transferred the patent prosecution responsibility to other partners at Knobbe Martens.
- 5. Masimo and Cercacor rely on my advice in legal matters related to intellectual property and technology. For the last 20 years, beginning with Masimo's first patent litigation in 1999, I have led Masimo's litigation teams.
- 6. I have represented Masimo in many patent lawsuits as well as other types of lawsuits, including:
  - Mallinckrodt Inc, et al v. Masimo Corporation, et al., Case No. 2-000cv06506 (C.D. Cal.);
  - Masimo Corp. v. Mallinckrodt Inc., et al., Case Nos. 8-01-cv-00638 & 2-01-

- cv-07292 (C.D. Cal.);
- Nellcor Puritan, et al. v. Masimo Corp., Case Nos. 8-02-cv-01133 & 2-03-cv-00603 (C.D. Cal.);
- Masimo Corporation v. Jay et al., Case No. 8-07-cv-01163 (C.D. Cal.);
- Masimo Corp. v. Philips Electronics Northern America Corp., Case Nos. 1-09-cv-00080, 1-11-cv-00742, and 1-16-cv-00137 (D. Del.);
- Hygia Health Services, Inc. v. Masimo Corp., Case No. 2-09-cv-00885 (N.D. Al.);
- Essential Medical Devices, Inc. v. Masimo Corp. et al., Case No. 1-11-cv-00734 (D. Del.);
- Dominion Assets LLC v. Masimo Corp. et al., Case Nos. 5-12-cv-02773, 5-14-cv-3002 (N.D. Cal.);
- Masimo Corp. v. Mindray DS USA, Inc. et al., Case Nos. 8-12-cv-02206
   (C.D. Cal.), 2-15-cv-00457 (D. N.J.) and 2-15-cv-06900 (D. N.J.);
- Masimo Corp. v. Shenzhen Mindray Bio-Medical Tech. Co. Ltd., 12-cv-02206 (C.D. Cal.);
- Masimo Corporation and Cercacor Laboratories, Inc. v. Nova Biomedical Corporation, Jams International Arbitration, Reference No. 1220045324;
- Christian Lewis, et al. v. Sheila D. Moore, Masimo Corporation, et al., No. 15-13979 (11th Cir.), appeal from District Court No. 2:13-cv-00733-KOB;
- Shandong Lihong Technology Limited Corp v. Masimo Corporation and DOES 1-10, Superior Court of the State of California, County of Orange, Case No. 30-2018-01002779-CU-BT-CJC;
- Silkeen LLC v. Masimo Corporation, C.A. No. 1:17-cv-01030-RGA (D. Del);
- U.S. Ex. Rel Ruhe, Serwitz, and Catala v. Masimo Corporation, 2:10-cv-08169-CJC-VBK (C.D. Cal);

- Physicians Healthsource, Inc. et al. v. Masimo Corporation, Case No. 8:14-cv-00001 JVS (ADSx) (C.D. Cal);
- Masimo Corporation v. James Welch, David Hunt Case No. 30-2013-00659172 (Superior Ct. of Cal., Orange County);
- Masimo Corporation v. Sotera Wireless, Inc. et al., Case No. 3-19-cv-01100 (S.D. Cal.);
- Masimo Corporation v. True Wearables, Inc. et al., Case No. 8:18-cv-02001 (C.D. Cal.); and
- *Masimo Corporation v. Apple, Inc.*, Case No. 8:20-cv-00048 (C.D. Cal.). Many of these cases have included claims by and against Masimo's direct competitors including both small organizations and large multi-national organizations.
- 7. I have served as outside counsel, including litigation counsel, for Cercacor since 2008, and have represented Cercacor in multiple lawsuits during that time, including:
  - Essential Medical Devices, Inc. v. Masimo Corp. et al., Case No. 1-11-cv-00734 (D. Del.);
  - Dominion Assets LLC v. Masimo Corp. et al., Case Nos. 5-12-cv-02773 & 5-14-cv-03002 (N.D. Cal.);
  - Masimo Corporation v. True Wearables, Inc. et al., Case No. 8:18-cv-02001 (C.D. Cal.); and
  - Masimo Corporation v. Apple, Inc., Case No. 8:20-cv-00048 (C.D. Cal.).
- 8. Parties in prior cases have sought to restrict my access to confidential materials. However, in all prior litigation for Masimo and Cercacor, including cases between key competitors, courts have allowed me to access all documents and information, just like any member of the litigation teams I lead. That includes confidential, attorneys'-eyes-only materials, under the respective protective orders.

- 9. Like any litigation attorney in the technology field, I am accustomed to abiding by protective orders. That includes taking precautions for viewing designated materials, and ensuring that I never reveal those materials, and the information contained therein, to my clients. In particular, I would not engage in, and am accustomed to simply abstaining from, any discussion that could arguably implicate information revealed to me under a protective order. This is the case with any litigation client where I receive information subject to a protective order.
- 10. Masimo and Cercacor rely on me to lead and supervise various litigation teams by leveraging my extensive understanding of Masimo's and Cercacor's technology to evaluate the complex legal issues that arise in their technology-related litigations. The companies rely on me to make important litigation decisions in consultation with my litigation teams, based on my long-time experience with these clients, particularly when a protective order prevents disclosure to the clients of the underlying reasons for such decisions. I discuss and coordinate strategy for all litigation cases with my litigation teams, and they rely heavily on my guidance and strategy, particularly with respect to complex technical subject matter. As outside counsel, I have also supervised trials involving Masimo that were handled by firms other than Knobbe Martens. I do not currently make business decisions for Masimo or Cercacor. My current role for Masimo and Cercacor is outside legal counsel.
- 11. Masimo and Cercacor trust me to provide critical legal advice and legal strategy. That trust has grown through years of my knowledge of their technology, business, trade secrets, and the complex legal issues concerning these areas. No other lawyer at my firm has the same history and breadth of understanding of Masimo's and Cercacor's technology, their legal strategies, their principals and their legal goals.
  - 12. In my current role as outside counsel, I do not make competitive

decisions for Masimo or Cercacor. Nothing about my role requires that I provide advice on competitive pricing relative to Apple. Nothing about my role requires that I provide technical design advice for Cercacor or Masimo, much less that would in any way involve anything relevant to Apple. Although I provide legal advice relating to various aspects of Masimo's and Cercacor's business, as described above, such advice is legal advice.

- 13. I have served as a member of the Board of Directors for Cercacor since January 2013. Cercacor Board meetings typically involve: (1) a business updates on the status of various projects; (2) a financial update to inform the Board about the financial health of the company; and (3) sometimes, a Board session without Cercacor executives to allow the Board to discuss compensation of the Cercacor executives. Updates regarding litigation or other legal issues might also be provided to the Board if necessary, and on that issue, I report to the board in my role as outside litigation counsel. Periodically the Cercacor Board is asked to approve acquisitions of other companies based on management's decision to make such an acquisition. As with all members of the Board, my role is to provide overall corporate governance and monitor the activities of Cercacor. I do not expect any competitive business decisions to be made at board meetings, much less any decisions that would relate in any way to CBI in this Investigation.
- 14. However, if discussions of any such issues do arise at a board meeting, I would have no difficulty abiding by the Protective Order in this Investigation (Order No. 1). If a business decision or even a discussion did arise that could arguably be affected by information I have received under a protective order, I would simply abstain from providing any input on that matter. For example, if Cercacor was recommending the acquisition of a target company where my knowledge of confidential information could arguably affect that decision, I would abstain from providing any input on the acquisition. Abstaining

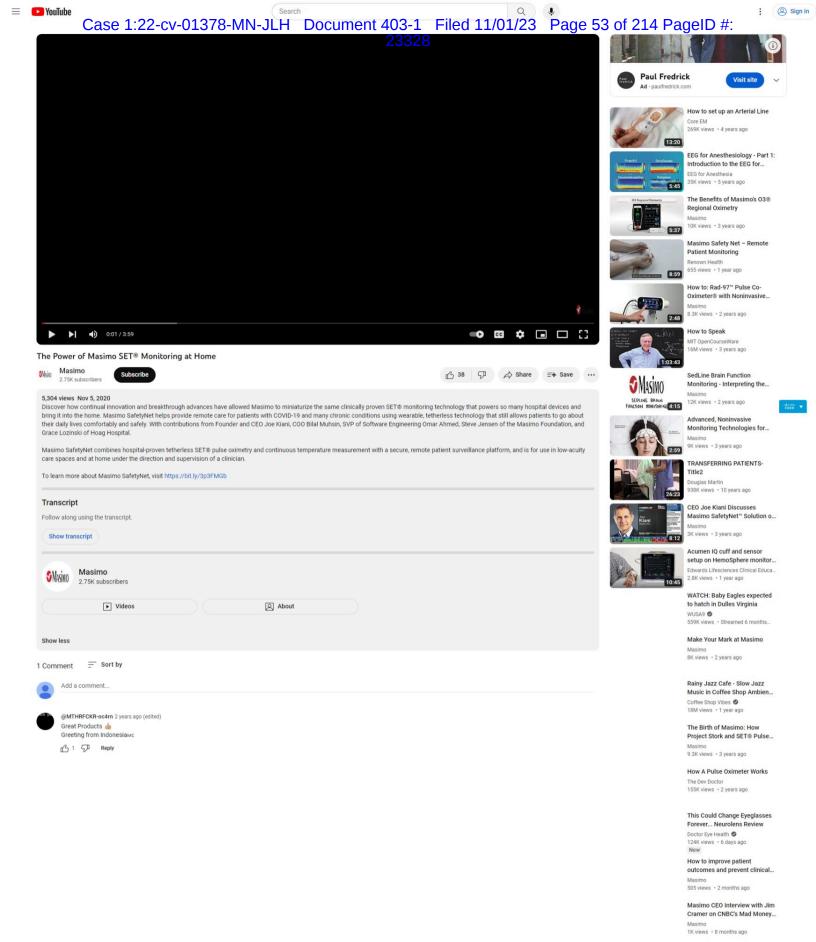
from certain discussions and decisions is a well-known and common practice among the board members with whom I interact. Indeed, my fiduciary obligation to the Board would not be compromised by abstaining from certain discussions and decisions, as this is a common practice by board members. I have personally abstained from discussions if confidential information I have been exposed to in litigation or otherwise is in any way implicated by the discussion. Other board members abstain when confidential information they have from third parties could be implicated by a discussion. This common practice has always been met with immediate understanding by all involved in those discussions.

- 15. If, however, the Court believes that my board service conflicts in any way with my access to Apple's CBI, I am prepared to resign from the Board to resolve the issue. My goal is simply to ensure that my clients, Masimo and Cercacor, receive the best possible legal representation from me as the leader of their outside litigation teams, as they expect and have become accustomed to over the last more than 20 years. Cercacor and Masimo prioritize my leading of the litigation teams well above my Cercacor board service.
- 16. It is common for me to be asked to attend board of directors meetings, aside from Cercacor, as litigation team leader, including for clients other than Masimo. This is customary with most corporate clients, regardless of whether I or any lawyer is on any board. When significant litigation involving a company's important intellectual property or technology is involved, boards of directors frequently desire continual updates from the litigation team leader. This is routine.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on September 13, 2021 at Irvine, California.

/Stephen C. Jensen/
Stephen C. Jensen



Sadie Robertson Huff's Testimony Sadie Robertson Huff 827K views • 11 months ago

AO 88A (Rev. 12/20) Subpoena to Testify at a Deposition in a Civil Action

### UNITED STATES DISTRICT COURT

for the

District	of	Del	law	are

APPLE INC.,	
Plaintiff )	Civil Action No. 22-1378-MN-JLH
v. )  MASIMO CORPORATION and )  SOUND UNITED, LLC, )	Civil Action No. 22-1378-MN-JLH
Defendant )	
SUBPOENA TO TESTIFY AT A DE	EPOSITION IN A CIVIL ACTION
	s, Olson & Bear, LLP street, 14th Floor, Irvine, California 92614
(Name of person to whom	om this subpoena is directed)
Testimony: YOU ARE COMMANDED to appear at a deposition to be taken in this civil action. If you are an organize party serving this subpoena about the following matters, or the or more officers, directors, or managing agents, or designate of these matters: See Schedule A attached hereto.	zation, you must promptly confer in good faith with the ose set forth in an attachment, and you must designate one
Place: Regus Conference Center 445 S. Figueroa Street, Suite 2600 & 2700 Los Angeles, CA 90071	Date and Time: 09/18/2023 10:00 am
The deposition will be recorded by this method:	enographically, audiotaped, and videotaped
electronically stored information, or objects, and must	bring with you to the deposition the following documents, at permit inspection, copying, testing, or sampling of the ats to be produced on or before September 6, 2023, to: Avenue, New York, NY 10169
The following provisions of Fed. R. Civ. P. 45 are atta Rule 45(d), relating to your protection as a person subject to a respond to this subpoena and the potential consequences of no	
Date: 08/18/2023	
CLERK OF COURT	O.D.
	OR /s/ Jordan N. Malz
Signature of Clerk or Deputy Clerk	Attorney's signature
The name, address, e-mail address, and telephone number of the Plaintiff Apple Inc.	the attorney representing (name of party) , who issues or requests this subpoena, are:
Jordan N. Malz   Desmarais LLP   230 Park Ave., New York, N	
Notice to the person who issue	os ou voqueste this submoone

#### Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 12/20) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 22-1378-MN-JLH

### PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I served the subpoena by delivering a copy to the named individual as follows:  on (date); or  I returned the subpoena unexecuted because:  Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the  My fees are \$ for travel and \$ for services, for a total of \$  I declare under penalty of perjury that this information is true.	have also
Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the \$  If y fees are \$ for travel and \$ for services, for a total of \$	have also
Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the \$  If y fees are \$ for travel and \$ for services, for a total of \$	have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the \$  Ty fees are \$ for travel and \$ for services, for a total of \$	
I declare under penalty of perjury that this information is true.	0.00
te:	
server's signature	
Printed name and title	
Server's address	

Additional information regarding attempted service, etc.:

### Case 1:22-cv-01378-MN-JLH Document 403-1 Filed 11/01/23 Page 65 of 214 PageID #: 23340

AO 88A (Rev. 12/20) Subpoena to Testify at a Deposition in a Civil Action (Page 3)

#### Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

#### (c) Place of Compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- **(B)** within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.

#### (2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
  - **(B)** inspection of premises at the premises to be inspected.

#### (d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

#### (2) Command to Produce Materials or Permit Inspection.

- (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- **(B)** Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

### (3) Quashing or Modifying a Subpoena.

- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
  - (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
  - (iv) subjects a person to undue burden.
- **(B)** When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
  - (ii) ensures that the subpoenaed person will be reasonably compensated.

#### (e) Duties in Responding to a Subpoena.

- (1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:
- **(A)** *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- **(B)** Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- (C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- **(D)** Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

#### (2) Claiming Privilege or Protection.

- (A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
  - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- **(B)** Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

#### (g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

#### SCHEDULE A

### **DEFINITIONS**

The following terms shall have the meanings set forth below whenever used in any Definition, Instruction, Request for Production, or Deposition Topic.

- 1. As used herein, the terms "Knobbe," "You," or "Your" means Knobbe, Martens, Olson & Bear, LLP and all of their predecessors (merged, acquired, or otherwise), successors, subsidiaries, divisions, departments, and affiliates thereof, and all officers, directors, principals, agents, employees, attorneys, and other persons acting on their behalf.
- 2. As used herein, "Apple" means Apple Inc., all of its predecessors (merged, acquired, or otherwise), successors, subsidiaries, divisions, departments, and affiliates thereof, and all officers, directors, principals, agents, employees, attorneys, and other persons acting on their behalf.
- 3. As used herein, "Masimo" means Masimo Corporation and all of its predecessors (merged, acquired, or otherwise), successors, subsidiaries, parents, sisters, divisions, departments, partnerships, and affiliates thereof, and all officers, directors, principals, agents, employees, attorneys, and other persons acting on its behalf.
- 4. As used herein, "Sound United" means Sound United, LLC (a/k/a Masimo Consumer) and all of its predecessors (merged, acquired, or otherwise), successors, subsidiaries, parents, sisters, divisions, departments, partnerships, and affiliates thereof, and all officers, directors, principals, agents, employees, attorneys, and other persons acting on its behalf.
- 5. As used herein, "Cercacor" means Cercacor Laboratories Inc. and all of its predecessors (merged, acquired, or otherwise), successors, subsidiaries, parents, sisters, divisions, departments, partnerships, and affiliates thereof, and all officers, directors, principals, agents, employees, attorneys, and other persons acting on its behalf.

- 6. As used herein, "Masimo Asserted Patents" means U.S. Patent No. 10,687,743 ("the '743 Patent"), U.S. Patent No. 10,722,159 ("the '159 Patent"), U.S. Patent No. 8,190,223 ("the '223 Patent"), U.S. Patent No. 10,736,507 ("the '507 Patent"), and U.S. Patent No. 10,984,911 ("the '911 Patent").
- 7. As used herein, "Related Masimo Publications" means any patent, patent application, or patent application publication in the same patent family as any of the Masimo Asserted Patents, including any patent in the priority chain of the Masimo Asserted Patents, and all patent applications related to the Masimo Asserted Patents and any patents in the same family as any of the Masimo Asserted Patents, including any patent application in the priority chain of the Masimo Asserted Patents.
- 8. As used herein, "Patent Office" means the United States Patent and Trademark Office.
- 9. As used herein, "Inequitable Conduct References" means all references that are the subject of Apple's inequitable conduct allegations in this case, including without limitation (1) U.S. Pub. No. US2011/0004106 to Iwamiya et al.; (2) U.S. Patent No. 6,801,799 to Mendelson; (3) U.S. Patent No. 6,343,223 to Chin et al.; (4) U.S. Patent No. 5,099,842 to Mannheimer et al.; (5) U.S. Patent No. 6,580,086 to Schulz et al.; (6) U.S. Patent No. 6,816,241 to Grubisic; (7) U.S. Patent No. 5,782,756 to Mannheimer; (8) U.S. Patent No. 5,638,816 to Kiani et al.; (9) U.S. Patent No. 5,203,329 to Takatani et al.; (10) Nellcor pulse oximeter products, including the NPB-195, N-395, and OxiMax N-595 products; (11) Mendelson et al., "A Wearable Reflectance Pulse Oximeter for Remote Physiological Monitoring," Proceedings of the 28th IEEE EM BS Annual International Conference, August 30-September 3, 2006 ("Mendelson IEEE"); and (12) any other

references that Apple contends were withheld or the subject of "burying" in its response to Your Interrogatory No. 23 (*see* Ex. 1).

- 10. As used herein, "Medtronic" means Medtronic PLC, Covidien, Nellcor Puritan Bennett Inc., Mallinckrodt Inc., and all of their predecessors (merged, acquired, or otherwise), successors, subsidiaries, divisions, departments, and affiliates thereof, and all officers, directors, principals, agents, employees, attorneys, and other persons acting on their behalf.
- 11. As used herein, "Nellcor Prior Art Products" refers to all pulse oximeter and/or watch products made or sold by Medtronic before September 22, 2020. By way of example and not limitation, "Nellcor Prior Art Products" includes (1) all versions of Nellcor OxiMax pulse oximetry sensors, including without limitation all versions of the Nellcor OxiMax sensors such as those described in Exhibits 2 and 3, such as the Nellcor DS-100A; (2) the Nellcor N-595 Pulse Oximeter (see, e.g., Ex. 2); (3) the Nellcor N-395 Pulse Oximeter, including without limitation the Nellcor N-395 Pulse Oximeter Masimo accused of infringement in at least Masimo Corp. v. Mallinckrodt Inc., et al, 8:99-cv-01245 (CDCA) (see also Mallinckrodt, Inc. v. Masimo Corp., 147 F. App'x 158, 164 (Fed. Cir. 2005)); (4) the Nellcor NPB-195 Pulse Oximeter (see, e.g., Ex. 4); (4) the Nellcor N-3000 (see, e.g., Ex. 5); (5) the Nellcor Oxinet II Monitoring System (see, e.g., Ex. 6); (6) the Nellcor Oxinet III Monitoring System (see, e.g., Ex. 7); and (7) the Nellcor NPB-295 Monitor.
- 12. As used herein, the term "document" shall have the full meaning ascribed to it by the Federal Rules of Civil Procedure and includes the original and every non-identical copy or reproduction in Your possession, custody, or control, and further is used in a broad sense to refer to any electronically stored information ("ESI") or any tangible object or thing that contains, conveys, or records information.

- 13. As used herein, the singular of any word shall include the plural, and the plural shall include the singular.
- 14. As used herein, "person" means any natural person or any business, legal, or governmental entity or association.
- 15. As used herein, "include" and "including" shall be construed to mean "without limitation," so as to give the broadest possible meaning to interrogatories and definitions containing those words.
- 16. As used herein, "and" and "or" shall be construed conjunctively and disjunctively so as to acquire the broadest meaning possible.
- 17. As used herein, "any" and "all" shall each be construed to mean "each and every," so as to acquire the broadest meaning possible.
- 18. As used herein, the singular of any word shall include the plural, and the plural shall include the singular.
- 19. As used herein, "related" or "relating" to any given subject means, without limitation, identifying, describing, discussing, concerning, assessing, stating, reflecting constituting, containing, embodying, tending to support or refute, or referring directly or indirectly to, in any way, the particular subject matter identified.
- 20. As used herein, "identify" as applied to a document shall mean to specify: (a) the type of the document (i.e., whether it is a letter, memorandum, e-mail, etc.); (b) the document's title and general subject matter; (c) the number of pages of the document; (d) the date the document was prepared; (e) the name of each and every author, addressee, distributor, and recipient of the document; (f) the date each distributor distributed the document and the date each recipient

received the document; and (g) the name of each person that has or had possession, custody, or control of the document.

21. Any term not specifically defined herein shall be defined in accordance with normal usage as well as with the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Delaware.

### **INSTRUCTIONS FOR REQUESTS FOR PRODUCTION**

- 1. Apple's Requests for Production seek responsive documents and information sufficient to answer each of the Requests that are known or available You or in Your possession, custody, or control. If, after exercising due diligence to secure the documents or information requested, You cannot fully respond to a Request for Production, state that such is the case and answer to the fullest extent possible, stating what responsive documents or information are available, what documents or information cannot be provided, why the documents or information are unavailable, and what efforts were made to obtain the unavailable documents or information. If documents or information responsive to a Request in this subpoena are in Your control, but not in Your possession or custody, promptly identify the entity with possession or custody.
- 2. Regardless of whether a production is in electronic or paper format, documents that were maintained together before production should be produced in the same form, sequence, organization, or other order or layout as they were maintained, including any labels, file folders, file jackets, covers, or containers in which such documents are located or with which such documents are associated. If copies of documents are produced in lieu of the originals, such copies should be legible and bound or stapled in the same manner as the original.
- 3. These Requests for Production shall be deemed continuing. Documents located, and information learned or acquired, at any time after Your response is due must be promptly supplemented at the place specified in this subpoena.
- 4. A copy of the Protective Order entered in this Action for the protection of any requested proprietary, confidential, or commercially sensitive information is attached hereto.

#### **REQUESTS FOR PRODUCTION**

- 1. All documents referring or relating to the preparation, filing, and/or prosecution of each of the Masimo Asserted Patents, U.S. Patent No. 10,687,745, and the other Related Masimo Publications.
- 2. All documents relating to Your efforts to comply with the duty to disclose information material to the patentability under 37 C.F.R. § 1.56 during the prosecution of each Masimo Asserted Patent and Related Masimo Publications, including without limitation your determinations relating to what to disclose and not disclose to the Patent Office during these prosecutions.
- 3. All documents referring, relating to, or showing any awareness or involvement in the preparation, filing, and/or prosecution of each of the Masimo Asserted Patents, U.S. Patent No. 10,687,745, and the other Related Masimo Publications by Joe Kiani, Stephen Jensen, Harnik Shukla, and/or Jarom Kesler.
- 4. All documents referring or relating to each Inequitable Conduct Reference, including without limitation all documents referring to, relating to, or showing any awareness of the Inequitable Conduct References by Joe Kiani, Stephen Jensen, Harnik Shukla, and/or Jarom Kesler.
- 5. All documents referring or relating to any involvement in *Mallinckrodt, Inc. v. Masimo Corp.*, No. 2:00cv-06506 (C.D. Cal.); *Masimo Corp. v. Mallinckrodt Inc.*, Nos. 8:01-cv-00638 & 2:01-cv-07292 (C.D. Cal.); *Nellcor Puritan, et al. v. Masimo Corp.*, Nos. 8:02-cv-01133 & 2:03-cv-00603 (C.D. Cal.) by Joe Kiani and Stephen Jensen, including without limitation all declarations, affidavits, transcripts of testimony, and other submissions provided by or referring to Mr. Kiani or Mr. Jensen.

- 6. All documents relating to whether any Nellcor Prior Art Products infringe any Masimo, Cercacor, or Sound United Patent, including without limitation all infringement contentions in the following litigations: *Mallinckrodt, Inc. v. Masimo Corp.*, No. 2:00cv-06506 (C.D. Cal.); *Masimo Corp. v. Mallinckrodt Inc.*, Nos. 8:01-cv-00638 & 2:01-cv-07292 (C.D. Cal.); and *Nellcor Puritan, et al. v. Masimo Corp.*, Nos. 8:02-cv-01133 & 2:03-cv-00603 (C.D. Cal.).
- 7. All communications with Masimo, Cercacor, and/or Sound United regarding the Masimo Asserted Patents and Related Masimo Publications.
- 8. All documents referring or relating to any search results, including patentability, validity, prior-art, infringement, or state-of-the-art searches, concerning the Masimo Asserted Patents and Related Masimo Publications.
- 9. All agreements between You (including Stephen Jensen) and Masimo, Cercacor, and/or Sound United.

#### **DEPOSITION TOPICS**

- 1. The preparation, filing and prosecution of each of the Masimo Asserted Patents, U.S. Patent No. 10,687,745, and the other Related Masimo Publications, including without limitation the identity of all individuals involved in these prosecutions.
- 2. Your efforts to comply with the duty to disclose information material to the patentability under 37 C.F.R. § 1.56 during the prosecution of each Masimo Asserted Patent and Related Masimo Publications, including without limitation your determinations relating to what to disclose and not disclose to the Patent Office during these prosecutions.
- 3. Your determinations relating to what to disclose and not disclose to the Patent Office during prosecution of each of the Masimo Asserted Patents and Related Masimo Publications.
- 4. Any awareness or involvement in the preparation, filing, and/or prosecution of each of the Masimo Asserted Patents, U.S. Patent No. 10,687,745, and the other Related Masimo Publications by Joe Kiani, Stephen Jensen, Harnik Shukla, and/or Jarom Kesler.
- 5. Your knowledge and awareness of the Inequitable Conduct References during prosecution of the Masimo Asserted Patents, including without limitation the identity of all individuals having awareness of the Inequitable Conduct References as well as any awareness of the Inequitable Conduct References by Joe Kiani, Stephen Jensen, Harnik Shukla, and/or Jarom Kesler.
- 6. The reasons why the Nellcor NPB-195, N-395, and OxiMax N-595 were not disclosed to the Patent Office during prosecution of the '223 patent.
- 7. The reasons why Mendelson IEEE was not disclosed to the Patent Office during prosecution of the '507 patent.

- 8. The reasons You disclosed over 1,000 references to the Patent Office during each of the prosecutions of the '743 patent, the '159 patent, and the '911 patent, respectively.
- 9. Communications with Masimo, Cercacor, or Sound United regarding the Masimo Asserted Patents and Related Masimo Publications.
- 10. Your search results, including patentability, validity, prior-art, infringement, or state-of-the-art searches, concerning the Masimo Asserted Patents or Related Masimo Publications.
- 11. Executed agreements between You (including Stephen Jensen) and Masimo, Cercacor, or Sound United.
- 12. The subject matter contained within the documents produced in response to the Requests For Production herein, including the authentication thereof.

## **EXHIBIT 21**

AO 88A (Rev. 12/20) Subpoena to Testify at a Deposition in a Civil Action

### UNITED STATES DISTRICT COURT

for the

	District	of	Del	law	ar	e
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APPLE INC.,	)
Plaintiff	) Civil Action No. 22-1378-MN-JLH
v. MASIMO CORPORATION and SOUND UNITED, LLC,	) Civil Action No. 22-1378-MN-JLH )
Defendant	, )
SUBPOENA TO TESTIFY AT A	A DEPOSITION IN A CIVIL ACTION
	ephen Jensen, Esq., 2040 Main Street, 14th Floor, Irvine, California 92614
	o whom this subpoena is directed)
deposition to be taken in this civil action. If you are an or party serving this subpoena about the following matters,	ar at the time, date, and place set forth below to testify at a rganization, you must promptly confer in good faith with the or those set forth in an attachment, and you must designate one nate other persons who consent to testify on your behalf about
Place: Regus Conference Center 445 S. Figueroa Street, Suite 2600 & 2700 Los Angeles, CA 90071	Date and Time: 09/20/2023 10:00 am
The deposition will be recorded by this method:	Stenographically, audiotaped, and videotaped
electronically stored information, or objects, and	also bring with you to the deposition the following documents, must permit inspection, copying, testing, or sampling of the uments to be produced on or before September 6, 2023, to: Park Avenue, New York, NY 10169
	re attached – Rule 45(c), relating to the place of compliance; t to a subpoena; and Rule 45(e) and (g), relating to your duty to of not doing so.
Date: 08/22/2023	
CLERK OF COURT	
	OR /s/ Jordan N. Malz
Signature of Clerk or Deputy	Clerk Attorney's signature
The name, address, e-mail address, and telephone number	r of the attorney representing (name of narty)
Plaintiff Apple Inc.	, who issues or requests this subpoena, are:
Jordan N. Malz   Desmarais LLP   230 Park Ave., New Yo	
Notice to the person who	issues or requests this subnoens

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88A (Rev. 12/20) Subpoena to Testify at a Deposition in a Civil Action (Page 2)

Civil Action No. 22-1378-MN-JLH

#### PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this sul	opoena for (name of individual and title, if an	y)		
☐ I served the su	bpoena by delivering a copy to the nam	ned individual as follo	ws:	
		on (date)	; or	
☐ I returned the	subpoena unexecuted because:			
•	ena was issued on behalf of the United itness the fees for one day's attendance		•	
fees are \$	for travel and \$	for services,	for a total of \$	0.00
I declare under po	enalty of perjury that this information is	s true.		
te:		Server's sign	nature	
		Server 3 sign	atur e	
		Printed name a	und title	
		Server's ada	duora	

Additional information regarding attempted service, etc.:

### Case 1:22-cv-01378-MN-JLH Document 403-1 Filed 11/01/23 Page 79 of 214 PageID #: 23354

AO 88A (Rev. 12/20) Subpoena to Testify at a Deposition in a Civil Action (Page 3)

#### Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

#### (c) Place of Compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- **(B)** within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.

#### (2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
  - **(B)** inspection of premises at the premises to be inspected.

#### (d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

#### (2) Command to Produce Materials or Permit Inspection.

- (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- **(B)** Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

#### (3) Quashing or Modifying a Subpoena.

- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
  - (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
  - (iv) subjects a person to undue burden.
- **(B)** When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
  - (ii) ensures that the subpoenaed person will be reasonably compensated.

#### (e) Duties in Responding to a Subpoena.

- (1) **Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:
- **(A)** *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- **(B)** Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- (C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- **(D)** Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

#### (2) Claiming Privilege or Protection.

- (A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
  - (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
- (B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

#### (g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

#### **SCHEDULE A**

#### **DEFINITIONS**

The following terms shall have the meanings set forth below whenever used in any Definition, Instruction, Request for Production, or Deposition Topic.

- 1. As used herein, the terms "You" or "Your" means Stephen Jensen.
- 2. As used herein, "Apple" means Apple Inc., all of its predecessors (merged, acquired, or otherwise), successors, subsidiaries, divisions, departments, and affiliates thereof, and all officers, directors, principals, agents, employees, attorneys, and other persons acting on their behalf.
- 3. As used herein, "Masimo" means Masimo Corporation and all of its predecessors (merged, acquired, or otherwise), successors, subsidiaries, parents, sisters, divisions, departments, partnerships, and affiliates thereof, and all officers, directors, principals, agents, employees, attorneys, and other persons acting on its behalf.
- 4. As used herein, "Sound United" means Sound United, LLC (a/k/a Masimo Consumer) and all of its predecessors (merged, acquired, or otherwise), successors, subsidiaries, parents, sisters, divisions, departments, partnerships, and affiliates thereof, and all officers, directors, principals, agents, employees, attorneys, and other persons acting on its behalf.
- 5. As used herein, "Cercacor" means Cercacor Laboratories Inc. and all of its predecessors (merged, acquired, or otherwise), successors, subsidiaries, parents, sisters, divisions, departments, partnerships, and affiliates thereof, and all officers, directors, principals, agents, employees, attorneys, and other persons acting on its behalf.
- 6. As used herein, "Masimo Asserted Patents" means U.S. Patent No. 10,687,743 ("the '743 Patent"), U.S. Patent No. 10,722,159 ("the '159 Patent"), U.S. Patent No. 8,190,223

("the '223 Patent"), U.S. Patent No. 10,736,507 ("the '507 Patent"), and U.S. Patent No. 10,984,911 ("the '911 Patent").

- 7. As used herein, "Related Masimo Publications" means any patent, patent application, or patent application publication in the same patent family as any of the Masimo Asserted Patents, including any patent in the priority chain of the Masimo Asserted Patents, and all patent applications related to the Masimo Asserted Patents and any patents in the same family as any of the Masimo Asserted Patents, including any patent application in the priority chain of the Masimo Asserted Patents.
- 8. As used herein, "Patent Office" means the United States Patent and Trademark Office.
- 9. As used herein, "Inequitable Conduct References" means all references that are the subject of Apple's inequitable conduct allegations in this case, including without limitation (1) U.S. Pub. No. US2011/0004106 to Iwamiya et al.; (2) U.S. Patent No. 6,801,799 to Mendelson; (3) U.S. Patent No. 6,343,223 to Chin et al.; (4) U.S. Patent No. 5,099,842 to Mannheimer et al.; (5) U.S. Patent No. 6,580,086 to Schulz et al.; (6) U.S. Patent No. 6,816,241 to Grubisic; (7) U.S. Patent No. 5,782,756 to Mannheimer; (8) U.S. Patent No. 5,638,816 to Kiani et al.; (9) U.S. Patent No. 5,203,329 to Takatani et al.; (10) Nellcor pulse oximeter products, including the NPB-195, N-395, and OxiMax N-595 products; (11) Mendelson et al., "A Wearable Reflectance Pulse Oximeter for Remote Physiological Monitoring," Proceedings of the 28th IEEE EM BS Annual International Conference, August 30-September 3, 2006 ("Mendelson IEEE"); and (12) any other references that Apple contends were withheld or the subject of "burying" in its response to Your Interrogatory No. 23 (see Ex. 1).

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- 20. As used herein, "identify" as applied to a document shall mean to specify: (a) the type of the document (i.e., whether it is a letter, memorandum, e-mail, etc.); (b) the document's title and general subject matter; (c) the number of pages of the document; (d) the date the document was prepared; (e) the name of each and every author, addressee, distributor, and recipient of the document; (f) the date each distributor distributed the document and the date each recipient received the document; and (g) the name of each person that has or had possession, custody, or control of the document.

21. Any term not specifically defined herein shall be defined in accordance with normal usage as well as with the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Delaware.

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- 2. Regardless of whether a production is in electronic or paper format, documents that were maintained together before production should be produced in the same form, sequence, organization, or other order or layout as they were maintained, including any labels, file folders, file jackets, covers, or containers in which such documents are located or with which such documents are associated. If copies of documents are produced in lieu of the originals, such copies should be legible and bound or stapled in the same manner as the original.
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- 2. All documents relating to Your efforts to comply with the duty to disclose information material to the patentability under 37 C.F.R. § 1.56 during the prosecution of each Masimo Asserted Patent and Related Masimo Publications, including without limitation Your determinations relating to what to disclose and not disclose to the Patent Office during these prosecutions.
- 3. All documents referring, relating to, or showing Your awareness or involvement in the preparation, filing, and/or prosecution of each of the Masimo Asserted Patents, U.S. Patent No. 10,687,745, and the other Related Masimo Publications.
- 4. All documents referring or relating to each Inequitable Conduct Reference, including without limitation all documents referring to, relating to, or showing Your awareness of the Inequitable Conduct References.
- 5. All documents referring or relating to Your involvement in *Mallinckrodt, Inc. v. Masimo Corp.*, No. 2:00cv-06506 (C.D. Cal.); *Masimo Corp. v. Mallinckrodt Inc.*, Nos. 8:01-cv-00638 & 2:01-cv-07292 (C.D. Cal.); *Nellcor Puritan, et al. v. Masimo Corp.*, Nos. 8:02-cv-01133 & 2:03-cv-00603 (C.D. Cal.), including without limitation all declarations, affidavits, transcripts of testimony, and other submissions provided by or referring to You.
- 6. All documents relating to whether any Nellcor Prior Art Products infringe any Masimo, Cercacor, or Sound United Patent, including without limitation all infringement contentions in the following litigations: *Mallinckrodt, Inc. v. Masimo Corp.*, No. 2:00cv-06506

(C.D. Cal.); *Masimo Corp. v. Mallinckrodt Inc.*, Nos. 8:01-cv-00638 & 2:01-cv-07292 (C.D. Cal.); and *Nellcor Puritan, et al. v. Masimo Corp.*, Nos. 8:02-cv-01133 & 2:03-cv-00603 (C.D. Cal.).

- 7. All communications with Masimo, Cercacor, and/or Sound United regarding the Masimo Asserted Patents and Related Masimo Publications.
- 8. All documents referring or relating to any search results, including patentability, validity, prior-art, infringement, or state-of-the-art searches, concerning the Masimo Asserted Patents and Related Masimo Publications.
  - 9. All agreements between You and Masimo, Cercacor, and/or Sound United.

#### **EXEMPLARY DEPOSITION TOPICS**

By way of example and not limitation, the following exemplary topics are among those that will be covered at the deposition:

- 1. The preparation, filing and prosecution of each of the Masimo Asserted Patents, U.S. Patent No. 10,687,745, and the other Related Masimo Publications, including without limitation the identity of all individuals involved in these prosecutions.
- 2. Your efforts to comply with the duty to disclose information material to the patentability under 37 C.F.R. § 1.56 during the prosecution of each Masimo Asserted Patent and Related Masimo Publications, including without limitation Your determinations relating to what to disclose and not disclose to the Patent Office during these prosecutions.
- 3. Your determinations relating to what to disclose and not disclose to the Patent Office during prosecution of each of the Masimo Asserted Patents and Related Masimo Publications.
- 4. Your awareness or involvement in the preparation, filing, and/or prosecution of each of the Masimo Asserted Patents, U.S. Patent No. 10,687,745, and the other Related Masimo Publications.
- 5. Your knowledge and awareness of the Inequitable Conduct References during prosecution of the Masimo Asserted Patents.
- 6. The reasons why the Nellcor NPB-195, N-395, and OxiMax N-595 were not disclosed to the Patent Office during prosecution of the '223 patent.
- 7. The reasons why Mendelson IEEE was not disclosed to the Patent Office during prosecution of the '507 patent.
- 8. The reasons over 1,000 references were disclosed to the Patent Office during each of the prosecutions of the '743 patent, the '159 patent, and the '911 patent, respectively.

- 9. Your communications with Masimo, Cercacor, or Sound United regarding the Masimo Asserted Patents and Related Masimo Publications.
- 10. Your search results, including patentability, validity, prior-art, infringement, or state-of-the-art searches, concerning the Masimo Asserted Patents or Related Masimo Publications.
  - 11. Executed agreements between You and Masimo, Cercacor, or Sound United.
- 12. The subject matter contained within the documents produced in response to the Requests For Production herein, including the authentication thereof.

## **EXHIBIT 22**

# THIS EXHIBIT HAS BEEN REDACTED IN ITS ENTIRETY

## **EXHIBIT 23**

# THIS EXHIBIT HAS BEEN REDACTED IN ITS ENTIRETY

## **EXHIBIT 24**

#### Lee Matalon

From: Jared Bunker < Jared.Bunker@knobbe.com>

**Sent:** Friday, July 21, 2023 2:48 PM

**To:** Jordan Malz

Carson Olsheski; Jack Phillips; Knobbe.MasimoDE; Palapura, Bindu A.; Greenfield, Leon; Milici,

Jennifer; Kerri-Ann Limbeek; Megan C. Haney; Vote, Dominic; Ford, Mark; Peter Magic; Apple Masimo

Service; Moore, David E.; Benjamin Luehrs; Lee Matalon

**Subject:** [Ext] RE: Apple v. Masimo (C.A. Nos. 1377/1378) - ESI Stipulation

Attachments: We sent you safe versions of your files; 2023-07-21 Masimo\_s First Revised Email Requests (clean) -

1377 and 1378 - MASIMOL.1593L\_1594L.pdf; 2023-07-21 Masimo's First Revised Email Requests

(redline) - 1377 and 1378.pdf

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

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Jordan,

I'm attaching Masimo's revised email requests, along with a pdf showing our changes in redline.

Here are responses to some of the points raised during our meet and confer:

- Mr. Jensen served temporarily as a Sr. VP at Masimo. Masimo agrees to treat Mr. Jensen as a custodian and Masimo will search its systems for any emails of Mr. Jensen. This does not include Knobbe email. Cercacor and Sound United have no custody or control over any of Mr. Jensen's emails.
- We already provided more than enough explanation for including Messrs. Cook, Perica, and Williams. Messrs. Lynch and Jessen are included for similar reasons. As requested, if you have any support for the suggestion that the apex doctrine applies to email requests, please provide it.
- In our revised requests, we have selected a subset of terms for Mr. Myers.
- For Term Nos. 12-15, we added a proximity limiter.
- For Term No. 16, while "iSpO2" is a product, it is a Masimo product not an Apple product and it is not a common term. It is thus reasonable to include it without a secondary term. We narrowed the timeframe to six months before Masimo's press release announcing the release of iSpO2.
- For Term No. 17, we added a secondary term and narrowed the timeframe to 2018.
- For Term No. 18, we limited the timeframe but did not add a proximity limiter because that term requires three terms and is thus already narrow.
- For Term No. 19, we added a proximity limiter and a secondary term, and limited the timeframe.
- For Term No. 20, we limited the timeframe but did not add a proximity limiter because that term requires three terms and is thus already narrow. We also modified "app\*" to address the issue raised with "apple" and added an exclusionary phrase to address the issue raised with "iPhone."

Please confirm that Apple will run preliminary searches on these terms. We are available for a call on Monday if that would be helpful.

Sincerely, Jared

### Case 1:22-cv-01378-MN-JLH Document 403-1 Filed 11/01/23 Page 96 of 214 PageID #: 23371

#### Jared Bunker

Partner

949-721-2957 Direct

#### **Knobbe Martens**

From: Jordan Malz <JMalz@desmaraisllp.com>

**Sent:** Friday, July 21, 2023 1:49 PM

To: Jared Bunker < Jared.Bunker@knobbe.com >; Lee Matalon < LMatalon@desmaraisllp.com >

**Cc:** Carson Olsheski <COlsheski@desmaraisllp.com>; Jack Phillips <JCP@pmhdelaw.com>; Knobbe.MasimoDE

<Knobbe.MasimoDE@knobbe.com>; Palapura, Bindu A. <bpalapura@potteranderson.com>; Greenfield, Leon

<Leon.Greenfield@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>; Kerri-Ann Limbeek

<KLimbeek@desmaraisllp.com>; Megan C. Haney <mch@pmhdelaw.com>; Vote, Dominic

<Dominic.Vote@wilmerhale.com>; Ford, Mark <Mark.Ford@wilmerhale.com>; Peter Magic

<PMagic@desmaraisllp.com>; Apple Masimo Service <AppleMasimoService@desmaraisllp.com>; Moore, David E.

<dmoore@potteranderson.com>; Benjamin Luehrs <BLuehrs@desmaraisllp.com>

Subject: RE: Apple v. Masimo (C.A. Nos. 1377/1378) - ESI Stipulation

Jared,

We can exchange revised e-mail search terms today at 6 PM (Eastern) / 3 PM (Pacific). Would that time work for you? Or if you would prefer another time, please let us know.

Best, Jordan

Jordan N. Malz Desmarais LLP 230 Park Avenue New York, NY 10169 (212) 351-5497

From: Jordan Malz < <a href="mailto:JMalz@desmaraisllp.com">JMalz@desmaraisllp.com</a>>

Sent: Thursday, July 20, 2023 11:33 PM

To: Jared Bunker <Jared.Bunker@knobbe.com>; Lee Matalon <LMatalon@desmaraisllp.com>

Cc: Carson Olsheski <COlsheski@desmaraisllp.com>; Jack Phillips <JCP@pmhdelaw.com>; Knobbe.MasimoDE

<Knobbe.MasimoDE@knobbe.com>; Palapura, Bindu A. <bpalapura@potteranderson.com>; Greenfield, Leon

<Leon.Greenfield@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>; Kerri-Ann Limbeek

< <a href="mailto:KLimbeek@desmaraisllp.com">KLimbeek@desmaraisllp.com</a>; Megan C. Haney < <a href="mailto:mch@pmhdelaw.com">mch@pmhdelaw.com</a>; Vote, Dominic

<<u>Dominic.Vote@wilmerhale.com</u>>; Ford, Mark <<u>Mark.Ford@wilmerhale.com</u>>; Peter Magic

<PMagic@desmaraisllp.com>; Apple Masimo Service <AppleMasimoService@desmaraisllp.com>; Moore, David E.

<<u>dmoore@potteranderson.com</u>>; Benjamin Luehrs <<u>BLuehrs@desmaraisllp.com</u>>

Subject: Re: Apple v. Masimo (C.A. Nos. 1377/1378) - ESI Stipulation

Jared,

We are aiming to exchange revised email search requests with you tomorrow, but I will need to confirm tomorrow afternoon whether and when we can do so.

### Case 1:22-cv-01378-MN-JLH Document 403-1 Filed 11/01/23 Page 97 of 214 PageID #: 23372

Best, Jordan

Jordan N. Malz Desmarais LLP 230 Park Avenue New York, NY 10169 (212) 351-5497

From: Jared Bunker < Jared. Bunker@knobbe.com>

Sent: Thursday, July 20, 2023 7:21 PM

To: Lee Matalon <LMatalon@desmaraisllp.com>; Jordan Malz <JMalz@desmaraisllp.com>

Cc: Carson Olsheski < COlsheski@desmaraisllp.com>; Jack Phillips < JCP@pmhdelaw.com>; Knobbe.MasimoDE

<Knobbe.MasimoDE@knobbe.com>; Palapura, Bindu A. <bpalapura@potteranderson.com>; Greenfield, Leon

<Leon.Greenfield@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>; Kerri-Ann Limbeek

<KLimbeek@desmaraisllp.com>; Megan C. Haney <mch@pmhdelaw.com>; Vote, Dominic

<Dominic.Vote@wilmerhale.com>; Ford, Mark <<u>Mark.Ford@wilmerhale.com</u>>; Jordan Malz <<u>JMalz@desmaraisllp.com</u>>;

Peter Magic <PMagic@desmaraisllp.com>; Apple Masimo Service <AppleMasimoService@desmaraisllp.com>; Moore,

David E. <dmoore@potteranderson.com>; Benjamin Luehrs <BLuehrs@desmaraisllp.com>

Subject: [Ext] RE: Apple v. Masimo (C.A. Nos. 1377/1378) - ESI Stipulation

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#### Counsel,

We would like to exchange revised email search requests tomorrow. Will Apple be ready to exchange tomorrow?

Sincerely, Jared

#### Jared Bunker

Partner

949-721-2957 Direct

**Knobbe Martens** 

From: Lee Matalon < LMatalon@desmaraisllp.com>

**Sent:** Wednesday, July 19, 2023 8:55 AM

To: Jared Bunker < Jared Bunker@knobbe.com>

Cc: Carson Olsheski < COlsheski@desmaraisllp.com>; Jack Phillips < JCP@pmhdelaw.com>;

Knobbe.MasimoDE < Knobbe.MasimoDE@knobbe.com >; Palapura, Bindu A.

- < <u>bpalapura@potteranderson.com</u>>; Greenfield, Leon < <u>Leon.Greenfield@wilmerhale.com</u>>; Milici, Jennifer < <u>Jennifer.Milici@wilmerhale.com</u>>; Kerri-Ann Limbeek < <u>KLimbeek@desmaraisllp.com</u>>; Megan C. Haney
- <mch@pmhdelaw.com>; Vote, Dominic <Dominic.Vote@wilmerhale.com>; Ford, Mark
- <Mark.Ford@wilmerhale.com>; Jordan Malz <JMalz@desmaraisllp.com>; Peter Magic
- <<u>PMagic@desmaraisllp.com</u>>; Apple Masimo Service <<u>AppleMasimoService@desmaraisllp.com</u>>; Moore,

### Case 1:22-cv-01378-MN-JLH Document 403-1 Filed 11/01/23 Page 98 of 214 PageID #: 23373

David E. <<u>dmoore@potteranderson.com</u>>; Benjamin Luehrs <<u>BLuehrs@desmaraisllp.com</u>>

Subject: RE: Apple v. Masimo (C.A. Nos. 1377/1378) - ESI Stipulation

Thank you for confirming.

#### Lee J. Matalon | Associate

DESMARAIS LLP

T: (212) 351-3400| M: (609) 934-9757

E: lmatalon@desmaraisllp.com

From: Jared Bunker < <u>Jared.Bunker@knobbe.com</u>>

Sent: Wednesday, July 19, 2023 11:47 AM

To: Lee Matalon < LMatalon@desmaraisllp.com>

Cc: Carson Olsheski < COlsheski@desmaraisllp.com>; Jack Phillips < JCP@pmhdelaw.com>;

Knobbe.MasimoDE < Knobbe.MasimoDE@knobbe.com >; Palapura, Bindu A.

< <u>bpalapura@potteranderson.com</u>>; Greenfield, Leon < <u>Leon.Greenfield@wilmerhale.com</u>>; Milici, Jennifer

< <u>Jennifer.Milici@wilmerhale.com</u>>; Kerri-Ann Limbeek < <u>KLimbeek@desmaraisllp.com</u>>; Megan C. Haney

<<u>mch@pmhdelaw.com</u>>; Vote, Dominic <<u>Dominic.Vote@wilmerhale.com</u>>; Ford, Mark

< <u>Mark.Ford@wilmerhale.com</u>>; Jordan Malz < <u>JMalz@desmaraisllp.com</u>>; Peter Magic

< <u>PMagic@desmaraisllp.com</u>>; Apple Masimo Service < <u>AppleMasimoService@desmaraisllp.com</u>>; Moore,

David E. <<u>dmoore@potteranderson.com</u>>; Benjamin Luehrs <<u>BLuehrs@desmaraisllp.com</u>>

Subject: [Ext] RE: Apple v. Masimo (C.A. Nos. 1377/1378) - ESI Stipulation

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We can use the following Zoom credentials:

### Join Zoom Meeting:

https://knobbe.zoom.us/j/91856141978?pwd=dWJkS3JzNmtCbStHblJUNy9lVjZ4dz09

Your Meeting ID: 918 5614 1978 Your Meeting Password: 222724

#### One tap mobile:

+12133388477,,91856141978#,,,,,0#,,222724# US (Los Angeles)

+17209289299,,91856141978#,,,,,0#,,222724# US (Denver)

#### Jared Bunker

Partner

949-721-2957 Direct

**Knobbe Martens** 

From: Lee Matalon < LMatalon@desmaraisllp.com>

Sent: Tuesday, July 18, 2023 6:25 PM

To: Jared Bunker < Jared.Bunker@knobbe.com>

### Case 1:22-cv-01378-MN-JLH Document 403-1 Filed 11/01/23 Page 99 of 214 PageID #: 23374

Cc: Carson Olsheski < COlsheski@desmaraisllp.com >; Jack Phillips < JCP@pmhdelaw.com >;

Knobbe.MasimoDE < Knobbe.MasimoDE@knobbe.com >; Palapura, Bindu A.

- < <u>bpalapura@potteranderson.com</u>>; Greenfield, Leon < <u>Leon.Greenfield@wilmerhale.com</u>>; Milici, Jennifer
- <Jennifer.Milici@wilmerhale.com>; Kerri-Ann Limbeek <KLimbeek@desmaraisllp.com>; Megan C. Haney
- <<u>mch@pmhdelaw.com</u>>; Vote, Dominic <<u>Dominic.Vote@wilmerhale.com</u>>; Ford, Mark
- < <u>Mark.Ford@wilmerhale.com</u>>; Jordan Malz < <u>JMalz@desmaraisllp.com</u>>; Peter Magic
- < <u>PMagic@desmaraisllp.com</u>>; Apple Masimo Service < <u>AppleMasimoService@desmaraisllp.com</u>>; Moore,

David E. <<u>dmoore@potteranderson.com</u>>; Benjamin Luehrs <<u>BLuehrs@desmaraisllp.com</u>>

Subject: RE: Apple v. Masimo (C.A. Nos. 1377/1378) - ESI Stipulation

Jared, thank you for your email. We propose meeting and conferring on email requests at **4:00 pm ET tomorrow**. Let us know if that works for your team.

In response to your points:

First, is it Masimo's contention that none of Masimo, Cercacor, or Sound United have custody, control, or possession of any of Mr. Jensen's custodial emails? We understand that Mr. Jensen is at least a former Masimo employee or agent, and that he is presently on the board for Cercacor. See

https://www.knobbe.com/attorneys/steve-jensen ("Steve directly managed Masimo's OEM business . . . and currently serves on the Board of Directors of Cercacor"). Masimo, Cercacor, and Sound United must search any of Mr. Jensen's emails in their custody, control, or possession. We are willing to meet and confer on Mr. Jensen's emails in custody, control, or possession of your firm.

Second, Apple's time frames are not unreasonable. Masimo's own requests include searches back to November 5, 1998. We are willing to discuss appropriate date ranges when we meet and confer.

Third, we disagree, as Apple's requests involving Masimo have been appropriately narrowed. At a minimum, any custodial email sources in the possession, custody, and control of Sound United and Cercacor for the identified custodians must be searched for terms including "Masimo." We are willing to discuss these issues when we meet and confer.

Fourth, we disagree, and note that by Masimo's definition, many of Masimo's "terms" are also not single terms but collections of several terms and, by Masimo's definition, are also unacceptable. We are willing to discuss this when we meet and confer.

We look forward to discussing these and other issues when we meet and confer.

Best, Lee

#### Lee J. Matalon | Associate

DESMARAIS LLP

T: (212) 351-3400| M: (609) 934-9757

E: <u>lmatalon@desmaraisllp.com</u>

From: Jared Bunker < Jared.Bunker@knobbe.com>

**Sent:** Sunday, July 16, 2023 1:11 AM

To: Carson Olsheski < COlsheski @desmaraisllp.com>

Cc: Jack Phillips < <u>JCP@pmhdelaw.com</u>>; Knobbe.MasimoDE < <u>Knobbe.MasimoDE@knobbe.com</u>>; Palapura, Bindu A. < <u>bpalapura@potteranderson.com</u>>; Greenfield, Leon < <u>Leon.Greenfield@wilmerhale.com</u>>; Milici, Jennifer < <u>Jennifer.Milici@wilmerhale.com</u>>; Kerri-Ann Limbeek < <u>KLimbeek@desmaraisllp.com</u>>; Megan C.

Haney <mch@pmhdelaw.com>; Vote, Dominic <Dominic.Vote@wilmerhale.com>; Ford, Mark

<Mark.Ford@wilmerhale.com>; Jordan Malz <JMalz@desmaraisllp.com>; Peter Magic

< <u>PMagic@desmaraisllp.com</u>>; Apple Masimo Service < <u>AppleMasimoService@desmaraisllp.com</u>>; Moore,

### Case 1:22-cv-01378-MN-JLH Document 403-1 Filed 11/01/23 Page 100 of 214 PageID #: 23375

David E. < dmoore@potteranderson.com>; Benjamin Luehrs < BLuehrs@desmaraisllp.com>

Subject: [Ext] RE: Apple v. Masimo (C.A. Nos. 1377/1378) - ESI Stipulation

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Carson,

While there are other issues we can discuss soon, I write to identify four fundamental issues with Apple's email search requests.

First, Mr. Jensen is not a custodian of Masimo. If Apple seeks email discovery from Mr. Jensen, it will need to serve a subpoena on our firm.

Second, Apple's "timeframe" of October 8, 1999, to the present, which includes nearly the entire scope of email use at Masimo, is no limitation and is unreasonable.

Third, Apple's inclusion of "Masimo" as part of any "term" is unacceptable because "Masimo" will be included in every email as part of a signature block or email address.

Fourth, many of Apple's "terms" are not single terms but collections of several terms and are unacceptable. We may be able to come to an agreement on Apple's position that terms such as "MASI," "stock," and "share" should be considered a single term because they generally are variations of the same term. But Apple's "term" Nos. 1, 14, 15, 16, 18, and 19 are multiple terms and are unacceptable. "Term" No. 1, for example, consists of more than 30 terms, and "term" No. 14 consists of more than 10 terms.

Please tell us on Monday whether Apple will revise its email search requests.

Sincerely, Jared

Jared Bunker

Partner

949-721-2957 Direct

**Knobbe Martens** 

From: Carson Olsheski < COlsheski @desmaraisllp.com>

**Sent:** Thursday, July 13, 2023 8:57 PM

To: Jared Bunker < Jared.Bunker@knobbe.com>

**Cc:** Jack Phillips < <u>JCP@pmhdelaw.com</u>>; Knobbe.MasimoDE < <u>Knobbe.MasimoDE@knobbe.com</u>>; Palapura, Bindu A. < <u>bpalapura@potteranderson.com</u>>; Greenfield, Leon < <u>Leon.Greenfield@wilmerhale.com</u>>; Milici, Jennifer < <u>Jennifer.Milici@wilmerhale.com</u>>; Kerri-Ann Limbeek < <u>KLimbeek@desmaraisllp.com</u>>; Megan C.

Haney <<u>mch@pmhdelaw.com</u>>; Vote, Dominic <<u>Dominic.Vote@wilmerhale.com</u>>; Ford, Mark

< <u>Mark.Ford@wilmerhale.com</u>>; Jordan Malz < <u>JMalz@desmaraisllp.com</u>>; Peter Magic

< <u>PMagic@desmaraisllp.com</u>>; Apple Masimo Service < <u>AppleMasimoService@desmaraisllp.com</u>>; Moore,

David E. <a href="mailto:square: bluehrs@desmaraisllp.com">desmaraisllp.com</a>; Benjamin Luehrs <a href="mailto:square: bluehrs@desmaraisllp.com">BLuehrs@desmaraisllp.com</a>

Subject: RE: Apple v. Masimo (C.A. Nos. 1377/1378) - ESI Stipulation

### Case 1:22-cv-01378-MN-JLH Document 403-1 Filed 11/01/23 Page 101 of 214 PageID #: 23376

Jared,

Attached are our email requests.

Best,

Carson Olsheski Desmarais LLP 230 Park Avenue New York, NY 10169 212-808-2911 | direct

From: Jared Bunker < Jared.Bunker @knobbe.com>

Sent: Thursday, July 13, 2023 10:32 PM

To: Carson Olsheski < COlsheski @desmaraisllp.com>

**Cc:** Jack Phillips < <u>JCP@pmhdelaw.com</u>>; Knobbe.MasimoDE < <u>Knobbe.MasimoDE@knobbe.com</u>>; Palapura, Bindu A. < <u>bpalapura@potteranderson.com</u>>; Greenfield, Leon < <u>Leon.Greenfield@wilmerhale.com</u>>; Milici, Jennifer < <u>Jennifer.Milici@wilmerhale.com</u>>; Kerri-Ann Limbeek < <u>KLimbeek@desmaraisllp.com</u>>; Megan C.

Haney < mch@pmhdelaw.com >; Vote, Dominic < Dominic.Vote@wilmerhale.com >; Ford, Mark

< <u>Mark.Ford@wilmerhale.com</u>>; Jordan Malz < <u>JMalz@desmaraisllp.com</u>>; Peter Magic

< <u>PMagic@desmaraisllp.com</u>>; Apple Masimo Service < <u>AppleMasimoService@desmaraisllp.com</u>>; Moore,

David E. < dmoore@potteranderson.com>; Benjamin Luehrs < BLuehrs@desmaraisllp.com>

Subject: [Ext] RE: Apple v. Masimo (C.A. Nos. 1377/1378) - ESI Stipulation

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Carson,

I'm attaching our email requests.

Please note that, as recited in the ESI order, because discovery is not complete and, in particular, Defendants are still waiting for certain discovery response from Apple and Apple's position on waiver of privilege, Defendants reserve their right to seek additional email discovery as appropriate and justified. Also note that these email requests do not supersede Defendants' requests for Apple to collect and produce responsive communications regarding the review of Masimo and Cercaco applications for listing on the Apple App Store that are located in any non-custodial database or system for such communications.

Sincerely, Jared

Jared Bunker

Partner

### Case 1:22-cv-01378-MN-JLH Document 403-1 Filed 11/01/23 Page 102 of 214 PageID #: 23377

949-721-2957 Direct

#### **Knobbe Martens**

From: Jared Bunker < <u>Jared.Bunker@knobbe.com</u>>

**Sent:** Thursday, July 13, 2023 1:16 PM

To: Carson Olsheski < COlsheski@desmaraisllp.com>

**Cc:** Jack Phillips < <u>JCP@pmhdelaw.com</u>>; Knobbe.MasimoDE < <u>Knobbe.MasimoDE@knobbe.com</u>>; Palapura, Bindu A. < <u>bpalapura@potteranderson.com</u>>; Greenfield, Leon < <u>Leon.Greenfield@wilmerhale.com</u>>; Milici, Jennifer < <u>Jennifer.Milici@wilmerhale.com</u>>; Kerri-Ann Limbeek < <u>KLimbeek@desmaraisllp.com</u>>; Megan C.

Haney <mch@pmhdelaw.com>; Vote, Dominic <Dominic.Vote@wilmerhale.com>; Ford, Mark

< <u>Mark.Ford@wilmerhale.com</u>>; Jordan Malz < <u>JMalz@desmaraisllp.com</u>>; Peter Magic

< <u>PMagic@desmaraisllp.com</u>>; Apple Masimo Service < <u>AppleMasimoService@desmaraisllp.com</u>>; Moore,

David E. <<u>dmoore@potteranderson.com</u>>; Benjamin Luehrs <<u>BLuehrs@desmaraisllp.com</u>>

Subject: Re: Apple v. Masimo (C.A. Nos. 1377/1378) - ESI Stipulation

Carson,

That is fine. We'll probably send ours before then, but we're fine if you send yours at that time.

-Jared

On Jul 13, 2023, at 1:11 PM, Carson Olsheski < COlsheski@desmaraisllp.com> wrote:

Jared,

We propose exchanging search terms at 12:00am Eastern this evening. Please confirm that works for Masimo.

Best,

Carson

From: Carson Olsheski

Sent: Thursday, July 13, 2023 4:02 PM

**To:** Jared Bunker < <u>Jared.Bunker@knobbe.com</u>>; Jack Phillips < <u>JCP@pmhdelaw.com</u>> **Cc:** Knobbe.MasimoDE < Knobbe.MasimoDE@knobbe.com>; Palapura, Bindu A.

<bpalapura@potteranderson.com>; Greenfield, Leon <Leon.Greenfield@wilmerhale.com>;

Milici, Jennifer < Jennifer. Milici@wilmerhale.com>; Kerri-Ann Limbeek

<<u>KLimbeek@desmaraisllp.com</u>>; Megan C. Haney <mch@pmhdelaw.com>; Vote, Dominic

<<u>Dominic.Vote@wilmerhale.com</u>>; Ford, Mark <<u>Mark.Ford@wilmerhale.com</u>>; Jordan Malz

### Case 1:22-cv-01378-MN-JLH Document 403-1 Filed 11/01/23 Page 103 of 214 PageID #: 23378

< <u>JMalz@desmaraisllp.com</u>>; Peter Magic < <u>PMagic@desmaraisllp.com</u>>; Apple Masimo

Service < Apple Masimo Service @desmarais llp.com>; Moore, David E.

<a href="mailto:</a> <a href="mailto:dmoore@potteranderson.com">dmoore@potteranderson.com</a> ; Benjamin Luehrs <a href="mailto:BLuehrs@desmaraisllp.com">BLuehrs@desmaraisllp.com</a>

Subject: RE: Apple v. Masimo (C.A. Nos. 1377/1378) - ESI Stipulation

Thanks Jared,

We'll get it on file.

Carson Olsheski Desmarais LLP 230 Park Avenue New York, NY 10169 212-808-2911 | direct

From: Jared Bunker < Jared.Bunker@knobbe.com>

**Sent:** Thursday, July 13, 2023 1:34 PM

To: Carson Olsheski < <u>COlsheski@desmaraisllp.com</u>>; Jack Phillips < <u>JCP@pmhdelaw.com</u>>

Cc: Knobbe.MasimoDE < Knobbe.MasimoDE@knobbe.com >; Palapura, Bindu A.

<bpalapura@potteranderson.com>; Greenfield, Leon < Leon.Greenfield@wilmerhale.com>;

Milici, Jennifer < <u>Jennifer.Milici@wilmerhale.com</u>>; Kerri-Ann Limbeek

< <u>KLimbeek@desmaraisllp.com</u>>; Megan C. Haney < <u>mch@pmhdelaw.com</u>>; Vote, Dominic

<Dominic.Vote@wilmerhale.com>; Ford, Mark <Mark.Ford@wilmerhale.com>; Jordan Malz

<JMalz@desmaraisllp.com>; Peter Magic <PMagic@desmaraisllp.com>; Apple Masimo

Service < Apple Masimo Service @desmarais llp.com>; Moore, David E.

<dmoore@potteranderson.com>; Benjamin Luehrs <BLuehrs@desmaraisllp.com>

Subject: [Ext] RE: Apple v. Masimo (C.A. Nos. 1377/1378) - ESI Stipulation

\*\*EXTERNAL EMAIL\*\* This email originated from outside the company. Do not click on any link unless you recognize the sender and have confidence the content is safe.

*Carson*, we are fine with this and can send you our terms, custodians, and timeframes later today. You have our permission to e-sign and file (after removing the highlighting). I'll ask Jack and Megan to confirm that they are okay with this, too.

*Jack and Megan*, please let me know if you have any concerns. If not, could you give Carson permission to e-sign for you?

-Jared

Jared Bunker

Partner

949-721-2957 Direct

**Knobbe Martens** 

From: Carson Olsheski < COlsheski @desmaraisllp.com>

**Sent:** Tuesday, July 11, 2023 7:23 PM

### Case 1:22-cv-01378-MN-JLH Document 403-1 Filed 11/01/23 Page 104 of 214 PageID #: 23379

To: Jared Bunker < Jared. Bunker @knobbe.com>

Cc: Knobbe.MasimoDE < Knobbe.MasimoDE@knobbe.com >; Palapura, Bindu A.

<bpalapura@potteranderson.com>; Jack Phillips <JCP@pmhdelaw.com>; Greenfield, Leon

< <u>Leon.Greenfield@wilmerhale.com</u>>; Milici, Jennifer < <u>Jennifer.Milici@wilmerhale.com</u>>;

Kerri-Ann Limbeek < <u>KLimbeek@desmaraisllp.com</u>>; Megan C. Haney

<<u>mch@pmhdelaw.com</u>>; Vote, Dominic <<u>Dominic.Vote@wilmerhale.com</u>>; Ford, Mark

< <u>Mark.Ford@wilmerhale.com</u>>; Jordan Malz < <u>JMalz@desmaraisllp.com</u>>; Peter Magic

<PMagic@desmaraisllp.com>; Apple Masimo Service

 $<\!\!\underline{Apple Masimo Service@desmaraisllp.com}\!\!>; Moore, David E. <\!\!\underline{dmoore@potteranderson.com}\!\!>;$ 

Benjamin Luehrs < BLuehrs@desmaraisllp.com>

Subject: RE: Apple v. Masimo (C.A. Nos. 1377/1378) - ESI Stipulation

Hi Jared,

This looks good, but we made one revision to accelerate exchange of search terms highlighted in the attached. Please confirm this is acceptable to Masimo.

Best,

Carson Olsheski Desmarais LLP 230 Park Avenue New York, NY 10169 212-808-2911 | direct

From: Jared Bunker < Jared. Bunker@knobbe.com>

**Sent:** Thursday, July 6, 2023 9:57 PM

To: Carson Olsheski < COlsheski @desmaraisllp.com>

Cc: Knobbe.MasimoDE < Knobbe.MasimoDE@knobbe.com >; Palapura, Bindu A.

<bpalapura@potteranderson.com>; Jack Phillips <JCP@pmhdelaw.com>; Greenfield, Leon

<Leon.Greenfield@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>;

Kerri-Ann Limbeek < KLimbeek @desmaraisllp.com>; Megan C. Haney

<mch@pmhdelaw.com>; Vote, Dominic <Dominic.Vote@wilmerhale.com>; Ford, Mark

<Mark.Ford@wilmerhale.com>; Jordan Malz <JMalz@desmaraisllp.com>; Peter Magic

<PMagic@desmaraisllp.com>; Apple Masimo Service

<AppleMasimoService@desmaraisllp.com>; Moore, David E. <dmoore@potteranderson.com>;

Benjamin Luehrs < BLuehrs@desmaraisllp.com>

Subject: [Ext] RE: Apple v. Masimo (C.A. Nos. 1377/1378) - ESI Stipulation

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Carson,

### Case 1:22-cv-01378-MN-JLH Document 403-1 Filed 11/01/23 Page 105 of 214 PageID #: 23380

I'm attaching a revised draft of the ESI order. I tried to capture our agreement on the production format, translations, metadata fields, and native productions. I didn't track these changes, so let me know if you see any discrepancies.

I also made a few edits to the email discovery section to clarify that that section is for email and not ESI generally. I tracked those changes.

Let me know if you want to discuss.

Sincerely, Jared

#### Jared Bunker

Partner

949-721-2957 Direct

#### **Knobbe Martens**

From: Jared Bunker < <u>Jared.Bunker@knobbe.com</u>>

**Sent:** Thursday, July 6, 2023 11:01 AM

To: Carson Olsheski < <u>COlsheski@desmaraisllp.com</u>>

Cc: Knobbe.MasimoDE < Knobbe.MasimoDE @knobbe.com >; Palapura, Bindu A.

< <u>bpalapura@potteranderson.com</u>>; Jack Phillips < <u>JCP@pmhdelaw.com</u>>; Greenfield, Leon

<Leon.Greenfield@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>;

Kerri-Ann Limbeek < <u>KLimbeek@desmaraisllp.com</u>>; Megan C. Haney

<mch@pmhdelaw.com>; Vote, Dominic <Dominic.Vote@wilmerhale.com>; Ford, Mark

<Mark.Ford@wilmerhale.com>; Jordan Malz <JMalz@desmaraisllp.com>; Peter Magic

< <u>PMagic@desmaraisllp.com</u>>; Apple Masimo Service

<AppleMasimoService@desmaraisllp.com>; Moore, David E. <dmoore@potteranderson.com>;

Benjamin Luehrs < BLuehrs@desmaraisllp.com>

Subject: RE: Apple v. Masimo (C.A. Nos. 1377/1378) - ESI Stipulation

Carson,

We can agree to Apple's carve outs and Apple's proposal on the translation issue. We will send a revised ESI order draft later tonight for your review.

Sincerely, Jared

#### Jared Bunker

Partner

949-721-2957 Direct

**Knobbe Martens** 

From: Carson Olsheski < COlsheski @desmaraisllp.com>

Sent: Wednesday, July 5, 2023 6:45 PM

To: Jared Bunker < Jared.Bunker@knobbe.com>

Cc: Knobbe.MasimoDE < Knobbe.MasimoDE@knobbe.com >; Palapura, Bindu A.

< bpalapura@potteranderson.com >; Jack Phillips < <u>JCP@pmhdelaw.com</u> >; Greenfield, Leon

< <u>Leon.Greenfield@wilmerhale.com</u>>; Milici, Jennifer < <u>Jennifer.Milici@wilmerhale.com</u>>;

Kerri-Ann Limbeek < <u>KLimbeek@desmaraisllp.com</u>>; Megan C. Haney

### Case 1:22-cv-01378-MN-JLH Document 403-1 Filed 11/01/23 Page 106 of 214 PageID #: 23381

- <<u>mch@pmhdelaw.com</u>>; Vote, Dominic <<u>Dominic.Vote@wilmerhale.com</u>>; Ford, Mark
- < <u>Mark.Ford@wilmerhale.com</u>>; Jordan Malz < <u>JMalz@desmaraisllp.com</u>>; Peter Magic
- < <u>PMagic@desmaraisllp.com</u>>; Apple Masimo Service
- <a href="mailto:squares-norm-"><a href="mailto:squares-norm-">

Subject: RE: Apple v. Masimo (C.A. Nos. 1377/1378) - ESI Stipulation

Jared,

Apologies for the typo. Can you please promptly let us know any remaining disputes regarding the proposed ESI stipulation, and the certified translation issue?

Thanks,

Carson Olsheski

Desmarais LLP

230 Park Avenue

New York, NY 10169

212-808-2911 | direct

From: Carson Olsheski < <a href="mailto:COlsheski@desmaraisllp.com">COlsheski@desmaraisllp.com</a>>

Sent: Wednesday, July 5, 2023 9:42 PM

To: Jared Bunker < Jared.Bunker@knobbe.com>

Cc: Knobbe.MasimoDE < Knobbe.MasimoDE@knobbe.com >; Palapura, Bindu A.

< bpalapura@potteranderson.com >; Jack Phillips < <u>JCP@pmhdelaw.com</u> >; Greenfield, Leon

<<u>Leon.Greenfield@wilmerhale.com</u>>; Milici, Jennifer <<u>Jennifer.Milici@wilmerhale.com</u>>;

Kerri-Ann Limbeek < KLimbeek @desmaraisllp.com>; Megan C. Haney

- <mch@pmhdelaw.com>; Vote, Dominic <Dominic.Vote@wilmerhale.com>; Ford, Mark
- <Mark.Ford@wilmerhale.com>; Jordan Malz <JMalz@desmaraisllp.com>; Peter Magic
- <PMagic@desmaraisllp.com>; Apple Masimo Service

<a href="mailto:</a> <a href="mailto:AppleMasimoService@desmaraisllp.com"><a href="mailto:Moore">Moore</a>, David E. <a href="mailto:AppleMasimoService@desmaraisllp.com"><a href="mailto:Moore">Moore</a>, David E. <a href="mailto:AppleMasimoService@desmaraisllp.com"><a href="mailto:Moore">Moore</a>, David E. <a href="mailto:AppleMasimoService@desmaraisllp.com"><a href="mailto:Moore"><a href="mailto:Moore">Moore</a>, Moore</a>, David E. <a href="mailto:Moore@desmaraisllp.com"><a href="mailto:Moore@desmaraisllp.com">Moore</a>, Moore</a>, David E. <a href="mailto:Moore@desmaraisllp.com"><a href="mailto:Moore@desmaraisllp.com">Moore</a>, Moore</a>, David E. <a href="mailto:Moore@desmaraisllp.com"><a href="mailto:Moore@desmaraisllp.com">Moore@desmaraisllp.com</a>)</a>;

Benjamin Luehrs <<u>BLuehrs@desmaraisllp.com</u>>

Subject: RE: Apple v. Masimo (C.A. Nos. 1377/1378) - ESI Stipulation

Jared,

Following up on our email from June 30, can you please promptly let us know any remaining disputes regarding the protective order, and the certified translation issue?

Thanks,

Carson Olsheski Desmarais LLP 230 Park Avenue New York, NY 10169 212-808-2911 | direct

From: Carson Olsheski

**Sent:** Friday, June 30, 2023 4:53 PM

To: Jared Bunker < Jared.Bunker@knobbe.com>

Cc: Knobbe.MasimoDE < Knobbe.MasimoDE@knobbe.com >; Palapura, Bindu A.

<bpalapura@potteranderson.com>: Jack Phillips <JCP@pmhdelaw.com>: Greenfield, Leon

<Leon.Greenfield@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>; Kerri-Ann Limbeek < KLimbeek @desmaraisllp.com>; Megan C. Haney

<mch@pmhdelaw.com>; Vote, Dominic <Dominic.Vote@wilmerhale.com>; Ford, Mark

<Mark.Ford@wilmerhale.com>; Jordan Malz <JMalz@desmaraisllp.com>; Peter Magic

<PMagic@desmaraisllp.com>; Apple Masimo Service

<AppleMasimoService@desmaraisllp.com>; Moore, David E. <dmoore@potteranderson.com>;

Benjamin Luehrs < BLuehrs@desmaraisllp.com>

Subject: RE: Apple v. Masimo (C.A. Nos. 1377/1378) - ESI Stipulation

Hi Jared.

I think we are close. The productions will be text searchable, and Apple can agree to the additional metadata fields Masimo proposed. With respect to native file productions, Apple is fine with all of the file types Masimo proposed except Powerpoint and Key files. To the extent Apple's production raises any document quality issues, Apple will investigate any such issues and attempt to resolve them including production of natives if required. We await Masimo's response to the certified translation issue I wrote you about yesterday.

Best,

Carson Olsheski Desmarais LLP 230 Park Avenue New York, NY 10169 212-808-2911 | direct

From: Jared Bunker < Jared.Bunker@knobbe.com>

Sent: Wednesday, June 28, 2023 6:15 PM

To: Carson Olsheski < COlsheski @desmaraisllp.com>

Cc: Knobbe.MasimoDE < Knobbe.MasimoDE@knobbe.com >; Palapura, Bindu A.

<bpalapura@potteranderson.com>; Jack Phillips <JCP@pmhdelaw.com>; Greenfield, Leon

<Leon.Greenfield@wilmerhale.com>; Milici, Jennifer <Jennifer.Milici@wilmerhale.com>;

Kerri-Ann Limbeek < KLimbeek @desmaraisllp.com>; Megan C. Haney

<mch@pmhdelaw.com>; Vote, Dominic <Dominic.Vote@wilmerhale.com>; Ford, Mark

<Mark.Ford@wilmerhale.com>; Jordan Malz <JMalz@desmaraisllp.com>; Peter Magic

<PMagic@desmaraisllp.com>; Apple Masimo Service

<AppleMasimoService@desmaraisllp.com>; Moore, David E. <dmoore@potteranderson.com>;

Benjamin Luehrs < BLuehrs@desmaraisllp.com>

Subject: [Ext] RE: Apple v. Masimo (C.A. Nos. 1377/1378) - ESI Stipulation

### Case 1:22-cv-01378-MN-JLH Document 403-1 Filed 11/01/23 Page 108 of 214 PageID #: 23383

\*\*EXTERNAL EMAIL\*\* This email originated from outside the company. Do not click on any link unless you recognize the sender and have confidence the content is safe.

Carson,

Thank you for the call yesterday. We understand but disagree with Apple's positions. In an attempt to resolve the parties' disputes over the ESI order, we propose the following compromise: Masimo would be willing to agree to adding the option for PDF productions if Apple will agree that all productions will be text searchable and to the native file production and metadata fields Masimo proposed.

Sincerely, Jared

#### Jared Bunker

Partner

949-721-2957 Direct

**Knobbe Martens** 

From: Carson Olsheski < <a href="mailto:COlsheski@desmaraisllp.com">COlsheski@desmaraisllp.com</a>>

**Sent:** Tuesday, June 27, 2023 9:32 AM

To: Jared Bunker < Jared.Bunker@knobbe.com>

Cc: Knobbe.MasimoDE < Knobbe.MasimoDE@knobbe.com >; Palapura, Bindu A.

<bpalapura@potteranderson.com>; Jack Phillips <JCP@pmhdelaw.com>; Greenfield, Leon

< <u>Leon.Greenfield@wilmerhale.com</u>>; Milici, Jennifer < <u>Jennifer.Milici@wilmerhale.com</u>>;

Kerri-Ann Limbeek < KLimbeek@desmaraisllp.com>: Megan C. Hanev

<mch@pmhdelaw.com>; Vote, Dominic <<u>Dominic.Vote@wilmerhale.com</u>>; Ford, Mark

< Mark.Ford@wilmerhale.com >; Jordan Malz < JMalz@desmaraisllp.com >; Peter Magic

<PMagic@desmaraisllp.com>; Apple Masimo Service

<a href="mailto:square: 1.5"><a href="mailto:AppleMasimoService@desmaraisllp.com"><a href="mailto:square: 1.5"><a href="mailto:square: 1.5">desmaraisllp.com</a>>; Moore, David E. <a href="mailto:square: 1.5">dmoore@potteranderson.com</a>>;

Benjamin Luehrs < BLuehrs@desmaraisllp.com>

Subject: RE: Apple v. Masimo (C.A. Nos. 1377/1378) - ESI Stipulation

Hi Jared,

I've got an appointment ending right at 5 and might be a few minutes late. Can we do 5:15?

Thanks,

Carson

From: Jared Bunker < Jared.Bunker @knobbe.com>

Sent: Tuesday, June 27, 2023 12:22 PM

To: Carson Olsheski < COlsheski @desmaraisllp.com>

Cc: Knobbe.MasimoDE < Knobbe.MasimoDE@knobbe.com >; Palapura, Bindu A.

<bpalapura@potteranderson.com>; Jack Phillips <JCP@pmhdelaw.com>; Greenfield, Leon

# Case 1:22-cv-01378-MN-JLH Document 403-1 Filed 11/01/23 Page 109 of 214 PageID #: 23384

< <u>Leon.Greenfield@wilmerhale.com</u>>; Milici, Jennifer < <u>Jennifer.Milici@wilmerhale.com</u>>;

Kerri-Ann Limbeek < KLimbeek @desmaraisllp.com>; Megan C. Haney

<mch@pmhdelaw.com>; Vote, Dominic <<u>Dominic.Vote@wilmerhale.com</u>>; Ford, Mark

<Mark.Ford@wilmerhale.com>; Jordan Malz <JMalz@desmaraisllp.com>; Peter Magic

<<u>PMagic@desmaraisllp.com</u>>; Apple Masimo Service

<a href="mailto:</a> <a href="mailto:AppleMasimoService@desmaraisllp.com">Moore, David E. <a href="mailto:</a> <a href="mailto:AppleMasimoService@desmaraisllp.com">Moore, David E. <a href="mailto:</a> <a href="mailto:AppleMasimoService@desmaraisllp.com">Moore, David E. <a href="mailto:</a> <a href="mailto:AppleMasimoService@desmaraisllp.com">AppleMasimoService@desmaraisllp.com</a> <a href="mailto:AppleMasimose.">AppleMasimose.</a> <a href="mailto:Ap

Benjamin Luehrs < <u>BLuehrs@desmaraisllp.com</u>>

Subject: [Ext] Re: Apple v. Masimo (C.A. Nos. 1377/1378) - ESI Stipulation

\*\*EXTERNAL EMAIL\*\* This email originated from outside the company. Do not click on any link unless you recognize the sender and have confidence the content is safe.

Carson, we can use the following Zoom link:

Jared Bunker is inviting you to a scheduled Zoom meeting.

Topic: Apple v Masimo - ESI order

Time: Jun 27, 2023 04:00 PM Central Time (US and Canada)

### Join Zoom Meeting:

https://knobbe.zoom.us/j/97137878311?pwd=SG8zRjN6ODUzQWMxbjhGWTRVSXgwdz09

Your Meeting ID: 971 3787 8311 Your Meeting Password: 559909

### One tap mobile:

- +17866351003,,97137878311#,,,,,0#,,559909# US (Miami)
- +12678310333,,97137878311#,,,,,0#,,559909# US (Philadelphia)

### Dial by your location:

+1 213 338 8477 US (Los Angeles)

+1 646 518 9805 US (New York)

(877) 853 5257 US Toll-free

(888) 475 4499 US Toll-free

Find your local number: https://knobbe.zoom.us/u/acC5yCAAGX

Join by H.323:

162.255.37.11 (US West)

On Jun 26, 2023, at 1:13 PM, Carson Olsheski < <u>COlsheski@desmaraisllp.com</u>> wrote:

Hi Jared,

That works for me.

Best,

Carson

From: Jared Bunker < Jared. Bunker@knobbe.com>

Sent: Monday, June 26, 2023 1:52 PM

To: Carson Olsheski < <u>COlsheski@desmaraisllp.com</u>>

Cc: Knobbe.MasimoDE < Knobbe.MasimoDE@knobbe.com >; Palapura, Bindu A. < bpalapura@potteranderson.com >; Jack Phillips < JCP@PMHDELaw.com >;

Greenfield, Leon < Leon. Greenfield@wilmerhale.com >; Milici, Jennifer

<Jennifer.Milici@wilmerhale.com>; Kerri-Ann Limbeek

< <u>KLimbeek@desmaraisllp.com</u>>; Megan C. Haney < <u>mch@PMHDELaw.com</u>>;

Vote, Dominic < Dominic. Vote@wilmerhale.com>; Ford, Mark

<Mark.Ford@wilmerhale.com>; Jordan Malz <JMalz@desmaraisllp.com>; Peter

Magic < PMagic@desmaraisllp.com>; Megan C. Haney

<mch@PMHDELaw.com>; Apple Masimo Service

<a href="mailto:</a> <a href="mailto:AppleMasimoService@desmaraisllp.com"><a href="mailto:Moore"><a href="mailto:Moore">Moore</a>, David E.

<dmoore@potteranderson.com>; Benjamin Luehrs

<BLuehrs@desmaraisllp.com>

Subject: [Ext] RE: Apple v. Masimo (C.A. Nos. 1377/1378) - ESI Stipulation

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How about tomorrow at 5pm ET?

### Jared Bunker

Partner

949-721-2957 Direct

**Knobbe Martens** 

From: Carson Olsheski < COlsheski @desmaraisllp.com>

Sent: Monday, June 26, 2023 9:31 AM

To: Jared Bunker < Jared.Bunker@knobbe.com>

**Cc:** Knobbe.MasimoDE < <u>Knobbe.MasimoDE@knobbe.com</u> >; Palapura, Bindu A. < <u>bpalapura@potteranderson.com</u> >; Jack Phillips < <u>JCP@PMHDELaw.com</u> >;

Greenfield, Leon < Leon. Greenfield@wilmerhale.com >; Milici, Jennifer

# Case 1:22-cv-01378-MN-JLH Document 403-1 Filed 11/01/23 Page 111 of 214 PageID #: 23386

<Jennifer.Milici@wilmerhale.com>; Kerri-Ann Limbeek

<KLimbeek@desmaraisllp.com>; Megan C. Haney <mch@PMHDELaw.com>;

Vote, Dominic < Dominic. Vote@wilmerhale.com>; Ford, Mark

<<u>Mark.Ford@wilmerhale.com</u>>; Jordan Malz <<u>JMalz@desmaraisllp.com</u>>; Peter

Magic < <a href="Magic@desmaraisllp.com">PMagic@desmaraisllp.com</a>>; Megan C. Haney

<mch@PMHDELaw.com>; Apple Masimo Service

< <u>AppleMasimoService@desmaraisllp.com</u>>; Moore, David E.

<a href="mailto:<a href="mailto:dmoore@potteranderson.com">dmoore@potteranderson.com</a>; Benjamin Luehrs

<BLuehrs@desmaraisllp.com>

Subject: RE: Apple v. Masimo (C.A. Nos. 1377/1378) - ESI Stipulation

Hi Jared,

I can discuss this today after 4:00pm Eastern, or tomorrow after 3:00pm Eastern.

Best,

Carson

From: Jared Bunker < <u>Jared.Bunker@knobbe.com</u>>

**Sent:** Friday, June 23, 2023 9:36 PM

To: Carson Olsheski < COlsheski@desmaraisllp.com>

**Cc:** Knobbe.MasimoDE < <u>Knobbe.MasimoDE@knobbe.com</u>>; Palapura, Bindu A. < <u>bpalapura@potteranderson.com</u>>; Jack Phillips < <u>JCP@PMHDELaw.com</u>>;

Greenfield, Leon < Leon. Greenfield@wilmerhale.com>; Milici, Jennifer

<Jennifer.Milici@wilmerhale.com>; Kerri-Ann Limbeek

<KLimbeek@desmaraisllp.com>; Megan C. Haney <mch@PMHDELaw.com>;

Vote, Dominic < Dominic. Vote@wilmerhale.com>; Ford, Mark

<Mark.Ford@wilmerhale.com>: Jordan Malz <JMalz@desmaraisllp.com>: Peter

Magic < PMagic@desmaraisllp.com>; Megan C. Haney

<mch@PMHDELaw.com>; Apple Masimo Service

<a href="mailto:</a> <a href="mailto:AppleMasimoService@desmaraisllp.com"><a href="mailto:Moore"><a href="mailto:Moore">Moore</a>, David E.

<dmoore@potteranderson.com>; Benjamin Luehrs

<BLuehrs@desmaraisllp.com>

Subject: [Ext] RE: Apple v. Masimo (C.A. Nos. 1377/1378) - ESI Stipulation

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Carson,

I'm attaching our redlines and a few comments. Please let us know if you want to discuss this next week.

Sincerely, Jared

#### Jared Bunker

Partner

949-721-2957 Direct

#### **Knobbe Martens**

From: Carson Olsheski < COlsheski @desmaraisllp.com>

Sent: Wednesday, June 14, 2023 1:01 PM

To: Jared Bunker < Jared. Bunker@knobbe.com>

Cc: Knobbe.MasimoDE < Knobbe.MasimoDE@knobbe.com >; Palapura, Bindu 

Greenfield, Leon < Leon. Greenfield@wilmerhale.com>; Milici, Jennifer

<Jennifer.Milici@wilmerhale.com>; Kerri-Ann Limbeek

<KLimbeek@desmaraisllp.com>; Megan C. Haney <mch@PMHDELaw.com>;

Vote, Dominic < Dominic. Vote@wilmerhale.com>; Ford, Mark

<Mark.Ford@wilmerhale.com>; Jordan Malz <JMalz@desmaraisllp.com>; Peter

Magic < PMagic @desmaraisllp.com>; Megan C. Haney

<mch@PMHDELaw.com>; Apple Masimo Service

<a href="mailto:</a> <a href="mailto:AppleMasimoService@desmaraisllp.com"><a href="mailto:Moore"><a href="mailto:Moore">Moore</a>, David E.

<dmoore@potteranderson.com>; Benjamin Luehrs

<BLuehrs@desmaraisllp.com>

Subject: RE: Apple v. Masimo (C.A. Nos. 1377/1378) - Letter to Bunker re Discovery Responses

Hi Jared,

Attached please find an updated draft of the ESI Proposal. Please let us know if this is acceptable to Masimo. We'll get back to you as soon as we can on the privilege log and radar issues.

Best,

Carson Olsheski Desmarais LLP 230 Park Avenue New York, NY 10169 212-808-2911 | direct

From: Jared Bunker < Jared. Bunker @knobbe.com>

**Sent:** Tuesday, June 13, 2023 6:28 PM

To: Carson Olsheski < COlsheski @desmaraisllp.com>

Cc: Knobbe.MasimoDE < Knobbe.MasimoDE@knobbe.com >; Palapura, Bindu Greenfield, Leon < Leon. Greenfield@wilmerhale.com>; Milici, Jennifer

<Jennifer.Milici@wilmerhale.com>; Kerri-Ann Limbeek

<KLimbeek@desmaraisllp.com>; Megan C. Haney <mch@PMHDELaw.com>;

# Case 1:22-cv-01378-MN-JLH Document 403-1 Filed 11/01/23 Page 113 of 214 PageID #: 23388

Vote, Dominic < Dominic. Vote@wilmerhale.com>; Ford, Mark

<Mark.Ford@wilmerhale.com>; Jordan Malz <JMalz@desmaraisllp.com>; Peter

Magic < < PMagic@desmaraisllp.com >; Megan C. Haney

<mch@PMHDELaw.com>; Apple Masimo Service

< <u>AppleMasimoService@desmaraisllp.com</u>>; Moore, David E.

<a href="mailto:<a href="mailto:dmoore@potteranderson.com">dmoore@potteranderson.com</a>; Benjamin Luehrs

<BLuehrs@desmaraisllp.com>

**Subject:** [Ext] RE: Apple v. Masimo (C.A. Nos. 1377/1378) - Letter to Bunker re Discovery Responses

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Carson,

**ESI Order**. We agree to Apple's proposal for 20 custodians/20 search terms and drop the proposal for texts and chats. Please provide a redline of the ESI order as soon as possible this week.

**Privilege Log and Radr/Radar Issue**. Please let us know Apple's position on the privilege log and radr/radar issues tomorrow. We would like to resolve these issues or submit a motion for teleconference this week.

Sincerely, Jared

#### Jared Bunker

Partner

949-721-2957 Direct

**Knobbe Martens** 

From: Carson Olsheski < COlsheski @desmaraisllp.com>

**Sent:** Thursday, June 8, 2023 7:32 AM

To: Jared Bunker <Jared.Bunker@knobbe.com>; Benjamin Luehrs

<BLuehrs@desmaraisllp.com>

Cc: Knobbe.MasimoDE < Knobbe.MasimoDE@knobbe.com >; Palapura, Bindu

A. <<u>bpalapura@potteranderson.com</u>>; Jack Phillips <<u>JCP@PMHDELaw.com</u>>;

Greenfield, Leon < Leon. Greenfield@wilmerhale.com>; Milici, Jennifer

<Jennifer.Milici@wilmerhale.com>; Kerri-Ann Limbeek

<KLimbeek@desmaraisllp.com>; Megan C. Haney <mch@PMHDELaw.com>;

Vote, Dominic < <u>Dominic.Vote@wilmerhale.com</u>>; Ford, Mark

<Mark.Ford@wilmerhale.com>; Jordan Malz <JMalz@desmaraisllp.com>; Peter

Magic < PMagic@desmaraisllp.com>; Megan C. Haney

<mch@PMHDELaw.com>; Apple Masimo Service

<a href="mailto:</a> <a href="mailto:AppleMasimoService@desmaraisllp.com"><a href="mailto:Moore"><a href="mailto:Moore">Moore</a>, David E.

<dmoore@potteranderson.com>

**Subject:** RE: Apple v. Masimo (C.A. Nos. 1377/1378) - Letter to Bunker re Discovery Responses

Hi Jared,

I write to follow up on email search terms and custodians. Apple would be amenable to 20 custodians/20 search terms if Masimo drops its proposal for texts and chats. If that proposal is not acceptable to Masimo, we will propose 15 custodians/15 search terms if the issue is taken to the Court.

Best,

Carson Olsheski

Desmarais LLP

230 Park Avenue

New York, NY 10169

212-808-2911 | direct

From: Jared Bunker < <u>Jared.Bunker@knobbe.com</u>>

**Sent:** Monday, June 5, 2023 6:16 PM

To: Carson Olsheski < COlsheski@desmaraisllp.com >; Benjamin Luehrs

<BLuehrs@desmaraisllp.com>

Cc: Knobbe.MasimoDE < Knobbe.MasimoDE@knobbe.com >; Palapura, Bindu A. < bpalapura@potteranderson.com >; Jack Phillips < JCP@PMHDELaw.com >;

Greenfield, Leon < Leon. Greenfield@wilmerhale.com >; Milici, Jennifer

<Jennifer.Milici@wilmerhale.com>; Kerri-Ann Limbeek

< <u>KLimbeek@desmaraisllp.com</u>>; Megan C. Haney < <u>mch@PMHDELaw.com</u>>;

Vote, Dominic < Dominic. Vote@wilmerhale.com>; Ford, Mark

< <u>Mark.Ford@wilmerhale.com</u>>; Jordan Malz < <u>JMalz@desmaraisllp.com</u>>; Peter

Magic < PMagic@desmaraisllp.com>; Megan C. Haney

<mch@PMHDELaw.com>; Apple Masimo Service

<a href="mailto:</a> <a href="mailto:AppleMasimoService@desmaraisllp.com"><a href="mailto:Moore"><a href="mailto:Moore">Moore</a>, David E.

<dmoore@potteranderson.com>

**Subject:** [Ext] RE: Apple v. Masimo (C.A. Nos. 1377/1378) - Letter to Bunker re Discovery Responses

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#### Carson and Ben:

I write to clarify a few points in your June 5 email regarding our meet and confer on June 2, as well as to follow up on (a) the privilege log proposal, (b) the question regarding radr/radar documents, (c) the proposal regarding responding to deficiency letters, and (d) the proposed ESI order. (We'll write separately regarding Apple's responses to Defendants' first set of discovery requests.)

Points of Clarification from your June 5 email.

# Case 1:22-cv-01378-MN-JLH Document 403-1 Filed 11/01/23 Page 115 of 214 PageID #: 23390

- We do not currently have physical samples of the W1 with the wave electrode, the Freedom Watch, or the Freedom Band, but we are collecting prototypes for Apple's inspection. We will investigate what Mr. Kiani wore at trial.
- 2. Regarding its review of interrogatory responses, we agree to supplement Masimo's response to Apple's Interrogatory No. 4 (from the 1377 Case) based on interpreting "Asserted Patents" to also include the patents Apple is asserting in the 1378 Case. If there are other interrogatories for which Apple believes it is entitled to a supplement, please identify them.

**Privilege Log.** We have prepared a modified proposal based on our discussions. We propose the parties agree that privileged communications dated after January 9, 2020 (the day the CDCA complaint was filed) need not be logged on a privilege log if the communication (a) is with outside counsel; (b) relates solely to work on the ITC or CDCA case; or (c) is a redaction in a document and the unredacted portions of the document reasonably provide the privilege basis for the communication.

**Radr/Radar Documents**. Apple stated that it would provide its position on our question regarding responsive documents from Apple's radar system by this Friday, June 9. Please let us know promptly if our understanding is incorrect.

**Proposal regarding responding to Deficiency Letters and Conference of Counsel**. Apple agreed with Masimo's proposal that the parties endeavor to respond to deficiency letters within 7 days of receiving the letters and meeting and conferring within 10 days of receiving the letters.

#### ESI Order.

- Email Requests. Masimo proposed 30 custodians and 30 terms. Apple said it
  could not agree, and proposed 10 custodians and 10 terms. We maintain that 30
  custodians and 30 terms is reasonable and proportional in these cases, but if it
  would resolve the dispute, Masimo would be willing to agree to 20 custodians
  and 20 terms.
- 2. Text and Chat Requests. Masimo maintains its proposal for text and chat requests. We understand Apple does not agree to any request for the production of texts or chats as outlined by Masimo.
- 3. Production of images in PDF form. We explained why, in our view, production of documents with images in PDF form is burdensome on the receiving party. We proposed the parties agree that all document productions include images in TIFF format. Apple said it would provide its position. Please provide Apple's position by Friday, June 9.

Sincerely, Jared

#### Jared Bunker

Partner

949-721-2957 Direct

**Knobbe Martens** 

From: Carson Olsheski < COlsheski @desmaraisllp.com>

**Sent:** Monday, June 5, 2023 6:38 AM

# Case 1:22-cv-01378-MN-JLH Document 403-1 Filed 11/01/23 Page 116 of 214 PageID #: 23391

To: Jared Bunker < Jared.Bunker@knobbe.com>; Benjamin Luehrs

<a href="mailto:</a> <a href="mailto:BLuehrs@desmaraisllp.com">BLuehrs@desmaraisllp.com</a>; Kendall Loebbaka

< Kendall. Loebbaka@knobbe.com>

Cc: Knobbe.MasimoDE < Knobbe.MasimoDE@knobbe.com>; Palapura, Bindu

A. <<u>bpalapura@potteranderson.com</u>>; Jack Phillips <<u>JCP@PMHDELaw.com</u>>;

Greenfield, Leon < Leon. Greenfield@wilmerhale.com >; Milici, Jennifer

< <u>Jennifer.Milici@wilmerhale.com</u>>; Kerri-Ann Limbeek

<KLimbeek@desmaraisllp.com>; Megan C. Haney <mch@PMHDELaw.com>;

Vote, Dominic < Dominic. Vote@wilmerhale.com>; Ford, Mark

<Mark.Ford@wilmerhale.com>; Jordan Malz <JMalz@desmaraisllp.com>; Peter

Magic < <u>PMagic@desmaraisllp.com</u>>; Megan C. Haney

<mch@PMHDELaw.com>; Apple Masimo Service

<a href="mailto:</a> <a href="mailto:AppleMasimoService@desmaraisllp.com"><a href="mailto:Moore"><a href="mailto:Moore">Moore</a>, David E.

<dmoore@potteranderson.com>

**Subject:** RE: Apple v. Masimo (C.A. Nos. 1377/1378) - Letter to Bunker re Discovery Responses

#### Jared, Kendall

Thank you for the productive conferral on Friday. I write to memorialize a few items that we discussed:

Masimo agrees to produce responsive discovery regarding Masimo's alleged redesign, Freedom, and B1/Band.

Masimo does not currently have a physical sample of any of those products\* available for inspection or production.

Masimo will review its interrogatory responses, and get back to us to confirm it will supplement its responses such that they apply to all Accused Products, regardless of which case the interrogatory was initially propounded for.

Apple does not agree that the burden of logging purportedly privileged communications dated after the parties' CDCA case was filed outweighs the benefits

### Consistent with Apple's May 26 letter:

- Masimo agrees to produce information in response to Apple's Interrogatory 2 (served February 15, 2023) related to Apple Watch and its charger;
- 2. Masimo withdraws its objection Apple identified concerning attempts to modify and designing around;
- 3. Masimo does not intend to rely on an opinion of counsel defense;
- 4. Apple's articulations related to RFP Nos. 3, 9, 15, 16, 21, and 22 are correct; and
- 5. Masimo agrees to produce responsive information with the full scope of RFP 19 subject to Apple's limitation of the phrase "subject matter of the Asserted Patents" to "Asserted Patents";
- 6. Masimo agrees to produce three samples of W1; and
- 7. Masimo agrees to provide information responsive to RFP No. 27.

Please let us know promptly if Masimo wishes to supplement or clarify any of these positions.

# Case 1:22-cv-01378-MN-JLH Document 403-1 Filed 11/01/23 Page 117 of 214 PageID #: 23392

\* We understand that Mr. Kiani wore the Freedom to the CDCA trial. Please confirm that Masimo contends that neither that unit, nor any others like it, are available for inspection.

Carson Olsheski

Desmarais LLP

230 Park Avenue

New York, NY 10169

212-808-2911 | direct

From: Jared Bunker < <u>Jared.Bunker@knobbe.com</u>>

Sent: Wednesday, May 31, 2023 11:37 AM

To: Carson Olsheski < COlsheski @desmaraisllp.com>; Benjamin Luehrs

<BLuehrs@desmaraisllp.com>

**Cc:** Knobbe.MasimoDE < <u>Knobbe.MasimoDE@knobbe.com</u>>; Palapura, Bindu

A. <<u>bpalapura@potteranderson.com</u>>; Jack Phillips <<u>JCP@PMHDELaw.com</u>>;

Greenfield, Leon < Leon. Greenfield@wilmerhale.com>; Milici, Jennifer

<Jennifer.Milici@wilmerhale.com>; Kerri-Ann Limbeek

< <u>KLimbeek@desmaraisllp.com</u>>; Megan C. Haney < <u>mch@PMHDELaw.com</u>>;

Vote, Dominic < Dominic. Vote@wilmerhale.com>; Ford, Mark

< <u>Mark.Ford@wilmerhale.com</u>>; Jordan Malz < <u>JMalz@desmaraisllp.com</u>>; Peter

Magic < < PMagic@desmaraisllp.com >; Megan C. Haney

<mch@PMHDELaw.com>; Apple Masimo Service

<a href="mailto:</a> <a href="mailto:AppleMasimoService@desmaraisllp.com"><a href="mailto:Moore"><a href="mailto:Moore">Moore</a>, David E.

<dmoore@potteranderson.com>

**Subject:** [Ext] RE: Apple v. Masimo (C.A. Nos. 1377/1378) - Letter to Bunker re Discovery Responses

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#### Carson,

Thank you for confirming a start time. If you could circulate a dial-in, that would be great.

Regarding your question, the first item relates to the parties' privilege log obligations. The burden of logging privileged communications dated after the parties' CDCA case was filed seems to outweigh the benefits. I understand the parties agreed to the same approach in the ITC case. The second item relates to responsive documents from Apple's radar bug-tracking system. That system contains cover documents with attachments "uploaded" to the specific entry. Apple can produce radar cover documents and their attached documents with metadata associating a cover document with their attachments in a single document family. This metadata reflects how these radar cover documents and

# Case 1:22-cv-01378-MN-JLH Document 403-1 Filed 11/01/23 Page 118 of 214 PageID #: 23393

their attachments are organized in the ordinary course of Apple's business. We would like Apple to confirm that it will produce any responsive radar cover documents with their attachments and the metadata to associate the cover document with their attachments.

Also, I don't believe we received a response to our proposal that the parties agree to respond to discovery deficiency letters within 7 days of receiving the letters and meet and confer on any remaining disputes within 10 days of receiving the letters. Perhaps we can close the loop on that item as well.

Sincerely, Jared

#### Jared Bunker

Partner

949-721-2957 Direct

**Knobbe Martens** 

From: Carson Olsheski < COlsheski @desmaraisllp.com>

**Sent:** Tuesday, May 30, 2023 6:32 AM

To: Jared Bunker <Jared.Bunker@knobbe.com>; Benjamin Luehrs

<<u>BLuehrs@desmaraisllp.com</u>>

Cc: Knobbe.MasimoDE < Knobbe.MasimoDE@knobbe.com >; Palapura, Bindu A. < bpalapura@potteranderson.com >; Jack Phillips < JCP@PMHDELaw.com >; Greenfield, Leon < Leon.Greenfield@wilmerhale.com >; Milici, Jennifer

<Jennifer.Milici@wilmerhale.com>; Kerri-Ann Limbeek

< <u>KLimbeek@desmaraisllp.com</u>>; Megan C. Haney < <u>mch@PMHDELaw.com</u>>;

Vote, Dominic < Dominic. Vote@wilmerhale.com>; Ford, Mark

< <u>Mark.Ford@wilmerhale.com</u>>; Jordan Malz < <u>JMalz@desmaraisllp.com</u>>; Peter

Magic < PMagic@desmaraisllp.com>; Megan C. Haney

<mch@PMHDELaw.com>; Apple Masimo Service

<a href="mailto:</a> <a href="mailto:AppleMasimoService@desmaraisllp.com"><a href="mailto:Moore"><a href="mailto:Moore">Moore</a>, David E.

<<u>dmoore@potteranderson.com</u>>

**Subject:** RE: Apple v. Masimo (C.A. Nos. 1377/1378) - Letter to Bunker re Discovery Responses

Jared,

We can confer at 3:00pm ET on Friday. As to the two new items you've raised, can you please provide some background explaining precisely what Masimo is looking for and why those proposals are appropriate?

Best,

Carson Olsheski

Desmarais LLP

230 Park Avenue

New York, NY 10169

212-808-2911 | direct

From: Jared Bunker < <u>Jared.Bunker@knobbe.com</u>>

**Sent:** Monday, May 29, 2023 12:35 PM

To: Benjamin Luehrs <<u>BLuehrs@desmaraisllp.com</u>>; Carson Olsheski

<COlsheski@desmaraisllp.com>

**Cc:** Knobbe.MasimoDE < <u>Knobbe.MasimoDE@knobbe.com</u>>; Palapura, Bindu A. < <u>bpalapura@potteranderson.com</u>>; Jack Phillips < <u>JCP@PMHDELaw.com</u>>;

Greenfield, Leon < Leon. Greenfield@wilmerhale.com>; Milici, Jennifer

<Jennifer.Milici@wilmerhale.com>; Kerri-Ann Limbeek

< <u>KLimbeek@desmaraisllp.com</u>>; Megan C. Haney < <u>mch@PMHDELaw.com</u>>;

Vote, Dominic < <u>Dominic.Vote@wilmerhale.com</u>>; Ford, Mark

< <u>Mark.Ford@wilmerhale.com</u>>; Jordan Malz < <u>JMalz@desmaraisllp.com</u>>; Peter

Magic < PMagic@desmaraisllp.com>; Megan C. Haney

<mch@PMHDELaw.com>; Apple Masimo Service

<AppleMasimoService@desmaraisllp.com>; Moore, David E.

<dmoore@potteranderson.com>

**Subject:** [Ext] RE: Apple v. Masimo (C.A. Nos. 1377/1378) - Letter to Bunker re Discovery Responses

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Ben and Carson,

We are available to meet and confer on Friday, June 2, between 2pm ET and 5pm ET, regarding the items in your emails and letter from 5/26. Please propose a time and circulate a dial-in.

During the call, we'd like to discuss two other items. First, we propose the parties agree that privileged communications dated after January 9, 2020 (the day the CDCA complaint was filed) need not be logged. Second, we would like Apple to confirm that its document production will include its radar/change log top level documents for responsive documents, along with the top level documents' associated family metadata.

Sincerely, Jared

Jared Bunker

Partner

949-721-2957 Direct

**Knobbe Martens** 

From: Benjamin Luehrs < BLuehrs@desmaraisllp.com>

**Sent:** Friday, May 26, 2023 2:36 PM

To: Jared Bunker < <u>Jared.Bunker@knobbe.com</u>>

# Case 1:22-cv-01378-MN-JLH Document 403-1 Filed 11/01/23 Page 120 of 214 PageID #: 23395

Cc: Knobbe.MasimoDE < Knobbe.MasimoDE@knobbe.com >; Palapura, Bindu

A. <bpalapura@potteranderson.com>; Jack Phillips <JCP@PMHDELaw.com>;

Greenfield, Leon < Leon. Greenfield@wilmerhale.com >; Milici, Jennifer

<Jennifer.Milici@wilmerhale.com>; Kerri-Ann Limbeek

<KLimbeek@desmaraisllp.com>; Megan C. Haney <mch@PMHDELaw.com>;

Vote, Dominic < Dominic. Vote@wilmerhale.com>; Ford, Mark

<<u>Mark.Ford@wilmerhale.com</u>>; Jordan Malz <<u>JMalz@desmaraisllp.com</u>>; Peter

Magic < PMagic@desmaraisllp.com >; Megan C. Haney

<mch@PMHDELaw.com>; Apple Masimo Service

<a href="mailto:</a> <a href="mailto:AppleMasimoService@desmaraisllp.com"><a href="mailto:Moore"><a href="mailto:Moore">Moore</a>, David E.

<<u>dmoore@potteranderson.com</u>>

Subject: Apple v. Masimo (C.A. Nos. 1377/1378) - Letter to Bunker re

Discovery Responses

Counsel,

Please see the attached correspondence.

Sincerely, Ben

Ben Luehrs | DESMARAIS LLP

230 Park Avenue | New York, NY 10169 T: (212) 808-2952 | M: (203) 962-6557

E: bluehrs@desmaraisllp.com

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**Documents & Transactions** 

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Patent Term Adjustment

Foreign priority

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Supplemental Content

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**Display References** 

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#### PHYSIOLOGICAL MONITOR WITH MOBILE COMPUTING DEVICE CONNECTIVITY

PUBLIC VIEW

**Application** # 15/880,071

Confirmation#

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Supplemental Content

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HIRAI, YUSUKE (Not Active)	L1334	HIRAI, YUSUKE (Not Active)	L1334

## 16/791,955 | MAS.1007C4:

#### PHYSIOLOGICAL MEASUREMENT DEVICES, SYSTEMS, AND METHODS

PUBLIC VIEW

Application# 16/791,955

Confirmation# 3106

Attorney Docket # MAS.1007C4

Patent #

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#### **Documents & Transactions**

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#### Patent Term Adjustment

Foreign priority

Fee payment history

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Supplemental Content

Assignments

**Display References** 

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HIRAI, YUSUKE L13 (Not Active)	HIRAI, YUSUKE (Not Active)	L1334

# **EXHIBIT 27**

# 16/791,955 | MAS.1007C4:

## PHYSIOLOGICAL MEASUREMENT DEVICES, SYSTEMS, AND METHODS

PUBLIC VIEW

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Application# 16/791,955

Confirmation# 3106

Attorney Docket # MAS.1007C4

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Foreign priority

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-JLH	Document 4 HERMANSON, GREGORY (858) 707-4000	403-1 Fil <b>23)4</b> 447	ed 11/01/23 HERMANSON, GREGORY (858) 707-4000	Page 172 of 214 PageID #: 53018
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# **EXHIBIT 28**

### 16/791,963 | MAS.1007C5:

### PHYSIOLOGICAL MONITORING DEVICES, SYSTEMS, AND METHODS

Application # Confirmation # 16/791,963 4439

Attorney Docket # MAS.1007C5

Patent #

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### **Application Data**

#### **Documents & Transactions**

#### Continuity

#### Patent Term Adjustment

Foreign priority

Fee payment history

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#### Supplemental Content

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**Display References** 

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HIRAI, YUSUKE (Not Active)	L1334	HIRAI, YUSUKE (Not Active)	L1334

# **EXHIBIT 29**

### 17/028,655 | MLR.002C6: MULTIPLE WAVELENGTH SENSOR EMITTERS

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MLR.002C6

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Application # 17/028,655

Confirmation #

3736

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#### **Application Data**

#### **Documents & Transactions**

Continuity

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Fee payment history

### Address & Attorney/Agent Information

### Supplemental Content

Assignments

**Display References** 

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	LENKER, KAREN (949) 760-0404	54618	LENKER, KAREN (949) 760-0404	54618
	LOOTS, ELI (415) 954-4114	54715	LOOTS, ELI (415) 954-4114	54715
	BURGESS, CHERYL (949) 721-2935	55030	BURGESS, CHERYL (949) 721-2935	55030
	CANNON, TED (949) 760-0404	55036	CANNON, TED (949) 760-0404	55036
	JUANG, AGNES (949) 760-0404	55310	JUANG, AGNES (949) 760-0404	55310
	SMITH, RAYMOND (949) 760-0404	55634	SMITH, RAYMOND (949) 760-0404	55634
	KELLER, LAUREN (949) 721-6365	56553	KELLER, LAUREN (949) 721-6365	56553
	KESLER, JAROM (949) 760-0404	57046	KESLER, JAROM (949) 760-0404	57046
	CHRISTENSEN , MICHAEL (949) 760-0404	57505	CHRISTENSEN , MICHAEL (949) 760-0404	57505

JLF	Document STOUT, MARIA (858) 707-4000	403-1 F <b>23</b> 478	ent Center 11/01/23 Iled 11/01/23 STOUT, MARIA (858) 707-4000	Page 2 57571
	MARSDEN, MARK (858) 707-4000	57871	MARSDEN, MARK (858) 707-4000	57871
	BUNKER, JARED (949) 760-0404	58474	BUNKER, JARED (949) 760-0404	58474
	MELNICK, RYAN (858) 707-4000	58621	MELNICK, RYAN (858) 707-4000	58621
	KIMMEL, ANDREW (949) 760-0404	58855	KIMMEL, ANDREW (949) 760-0404	58855
	ESSIG, LINCOLN (202) 640-6400	59362	ESSIG, LINCOLN (202) 640-6400	59362
	TROSSEN, DAVID (415) 954-4114	59406	TROSSEN, DAVID (415) 954-4114	59406
	TULLIS, TERRY (949) 760-0404	59856	TULLIS, TERRY (949) 760-0404	59856
	GINGRICH, BRENDEN (858) 707-4000	60295	GINGRICH, BRENDEN (858) 707-4000	60295
	EVERTON, BENJAMIN (949) 760-0404	60659	EVERTON, BENJAMIN (949) 760-0404	60659
	RAZAI, ALI (949) 760-0404	60771	RAZAI, ALI (949) 760-0404	60771
	ROSS, CHRISTOPHER (949) 760-0404	60934	ROSS, CHRISTOPHER (949) 760-0404	60934
	PITZEL CRUZ, CAROL (206) 405-2000	61224	PITZEL CRUZ, CAROL (206) 405-2000	61224
	HEIDEMAN, COLIN (206) 405-2000	61513	HEIDEMAN, COLIN (206) 405-2000	61513
	PAPAGIANNIS, THEODORE (949) 760-0404	61546	PAPAGIANNIS, THEODORE (949) 760-0404	61546
	ZOVKO, NICHOLAS (949) 760-0404	61557	ZOVKO, NICHOLAS (949) 760-0404	61557

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	NATLAND, SUSAN (949) 760-0404	61595	NATLAND, SUSAN (949) 760-0404	61595
	MILLER, KIMBERLY (858) 707-4000	61749	MILLER, KIMBERLY (858) 707-4000	61749
	JARDINE, JASON (858) 707-4000	61805	JARDINE, JASON (858) 707-4000	61805
	DAVIS, AARON (415) 954-4114	62027	DAVIS, AARON (415) 954-4114	62027
	ANGER, BENJAMIN (858) 707-4000	62207	ANGER, BENJAMIN (858) 707-4000	62207
	GILLIES, IAN (858) 707-4000	62280	GILLIES, IAN (858) 707-4000	62280
	NELSON, PHILIP (949) 760-0404	62676	NELSON, PHILIP (949) 760-0404	62676
	MATTHAEI, CHRISTIE (206) 405-2000	62933	MATTHAEI, CHRISTIE (206) 405-2000	62933
	KOCH, KREGG (310) 551-3450	63035	KOCH, KREGG (310) 551-3450	63035
	CLAASSEN, BRIAN (949) 760-0404	63051	CLAASSEN, BRIAN (949) 760-0404	63051
	LIM, CHANG (949) 760-0404	63106	LIM, CHANG (949) 760-0404	63106
	LUMAN, NATHANAEL (858) 836-9000	63160	LUMAN, NATHANAEL (858) 836-9000	63160
	LAQUER, ALAN (949) 760-0404	63635	LAQUER, ALAN (949) 760-0404	63635
	HALLSTROM, JEFFERY (949) 760-0404	63934	HALLSTROM, JEFFERY (949) 760-0404	63934
	STOWELL, JOSHUA (949) 760-9562	64096	STOWELL, JOSHUA (949) 760-9562	64096
	SWARTZ, JASON 6 (09/) 734-6888	64420	SWARTZ, JASON 6 (09/) 734-6888	64420

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	DUFOUR, DEVANIE (202) 640-6400	65026	DUFOUR, DEVANIE (202) 640-6400	65026
	CROMAR, SCOTT (949) 721-2812	65066	CROMAR, SCOTT (949) 721-2812	65066
	PETERSON, JACOB (949) 760-0404	65096	PETERSON, JACOB (949) 760-0404	65096
	HALL, LAURA (949) 721-7686	65157	HALL, LAURA (949) 721-7686	65157
	AMBROSIUS, SEAN (949) 760-0404	65290	AMBROSIUS, SEAN (949) 760-0404	65290
	DAILEY, DEREK (858) 707-4000	65562	DAILEY, DEREK (858) 707-4000	65562
	LAM, SHANNON (949) 760-0404	65614	LAM, SHANNON (949) 760-0404	65614
	CHEEK, ANDREA (202) 640-6400	65642	CHEEK, ANDREA (202) 640-6400	65642
	GERSTING, JASON (949) 760-0404	65890	GERSTING, JASON (949) 760-0404	65890
	ZORETIC, MARKO (949) 760-0404	65994	ZORETIC, MARKO (949) 760-0404	65994
	SMEMOE, LANCE (949) 760-0404	66152	SMEMOE, LANCE (949) 760-0404	66152
	BAYLES, DEREK (949) 760-0404	66226	BAYLES, DEREK (949) 760-0404	66226
	CHAN, JOAN (949) 760-0404	66385	CHAN, JOAN (949) 760-0404	66385
	NISHIMURA, TSUNEAKI (949) 721-5284	66619	NISHIMURA, TSUNEAKI (949) 721-5284	66619
	LLOYD, ANDREW (949) 760-0404	66766	LLOYD, ANDREW (949) 760-0404	66766

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	MERANI, SALIMA (949) 760-0404	67720	MERANI, SALIMA (949) 760-0404	67720
	SONG, HOCHAN (949) 760-0404	67824	SONG, HOCHAN (949) 760-0404	67824
	BACHAND, JONATHAN (202) 640-6400	67884	BACHAND, JONATHAN (202) 640-6400	67884
	BHARGAVA, VIKAS (949) 760-0404	68005	BHARGAVA, VIKAS (949) 760-0404	68005
	TEPLITSKIY, VLADISLAV (949) 721-5308	68069	TEPLITSKIY, VLADISLAV (949) 721-5308	68069
	STELLMAN, PAUL (415) 954-4114	68287	STELLMAN, PAUL (415) 954-4114	68287
	ADAMS, WILLIAM (949) 760-0404	68306	ADAMS, WILLIAM (949) 760-0404	68306
	CHAMPION, JASON (949) 760-0404	68316	CHAMPION, JASON (949) 760-0404	68316
	GIBSON, DANIEL (949) 760-0404	68329	GIBSON, DANIEL (949) 760-0404	68329
	LOZAN, VLADIMIR (949) 721-2828	68430	LOZAN, VLADIMIR (949) 721-2828	68430
	COWAN, THOMAS (858) 707-4000	68578	COWAN, THOMAS (858) 707-4000	68578
	LAKSHMANAN , VISWANATHA N (415) 954-4114	68587	LAKSHMANAN , VISWANATHA N (415) 954-4114	68587
	LARSON, STEPHEN (949) 760-0404	69133	LARSON, STEPHEN (949) 760-0404	69133
	CHOI, HEUNGSOO (858) 707-4000	69282	CHOI, HEUNGSOO (858) 707-4000	69282

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	HOWARD, DAMIEN (949) 760-0404	70256	HOWARD, DAMIEN (949) 760-0404	70256
	POWELL, ADAM (650) 752-1100	70367	POWELL, ADAM (650) 752-1100	70367
	RUBINSHTEIN, MARK (858) 707-4000	70451	RUBINSHTEIN, MARK (858) 707-4000	70451
	CASSIDY, KAREN MARIE (949) 721-5302	70611	CASSIDY, KAREN MARIE (949) 721-5302	70611
	MCWHORTER, BRYAN (206) 405-2000	70780	MCWHORTER, BRYAN (206) 405-2000	70780
	COX, JORDAN (702) 469-0472	70875	COX, JORDAN (702) 469-0472	70875
	GILLETT, JUSTIN (949) 760-0404	71099	GILLETT, JUSTIN (949) 760-0404	71099
	MAYER, HANS (949) 760-0404	71587	MAYER, HANS (949) 760-0404	71587
	KAMKAR, DANIEL (858) 707-4180	71679	KAMKAR, DANIEL (858) 707-4180	71679
	TSUNOZAKI, MAKOTO (415) 954-4114	71691	TSUNOZAKI, MAKOTO (415) 954-4114	71691
	GOTTDANK, JORDAN (858) 707-4000	71933	GOTTDANK, JORDAN (858) 707-4000	71933
	DREMANN, ANGELA (949) 760-0404	72250	DREMANN, ANGELA (949) 760-0404	72250
	GRAHAM, BRIAN (415) 814-6161	72423	GRAHAM, BRIAN (415) 814-6161	72423
	LAW, PETER (858) 707-4243	72722	LAW, PETER (858) 707-4243	72722
	SHUKLA, HARNIK (949) 760-0404	73097	SHUKLA, HARNIK (949) 760-0404	73097

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	KIM, DAVID (310) 551-3450	73265	KIM, DAVID (310) 551-3450	73265
	FORBES, MICHAEL (206) 405-2014	73513	FORBES, MICHAEL (206) 405-2014	73513
	ZENG, ALEXANDER (949) 721-5293	73564	ZENG, ALEXANDER (949) 721-5293	73564
	SUEIRAS, ALBERT (949) 721-2903	73710	SUEIRAS, ALBERT (949) 721-2903	73710
	JOHNSON, AARON (949) 395-4097	74164	JOHNSON, AARON (949) 395-4097	74164
	FEINSTEIN, ARYEH (202) 640-6408	74752	FEINSTEIN, ARYEH (202) 640-6408	74752
	WENTZEL, DOUGLAS (856) 285-4688	74897	WENTZEL, DOUGLAS (856) 285-4688	74897
	FILICE, DOMINIC (650) 849-3061	74907	FILICE, DOMINIC (650) 849-3061	74907
	ZIPERSTEIN, MICHELLE (310) 407-3475	75143	ZIPERSTEIN, MICHELLE (310) 407-3475	75143
	HENSON, CLAYTON (858) 707-4000	75150	HENSON, CLAYTON (858) 707-4000	75150
	SPIEL, PAUL (205) 405-2000	75231	SPIEL, PAUL (205) 405-2000	75231
	MARTINEZ, ALEXANDER (949) 760-0404	75319	MARTINEZ, ALEXANDER (949) 760-0404	75319
	ACHTSAM, JESSICA (949) 760-0404	75684	ACHTSAM, JESSICA (949) 760-0404	75684
	ANAPOL, JEREMY (949) 721-2806	75686	ANAPOL, JEREMY (949) 721-2806	75686
	CARNEY, JEREMY (949) 760-0404	75717	CARNEY, JEREMY (949) 760-0404	75717

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	BARNES, BRIAN (949) 721-5242	75805	BARNES, BRIAN (949) 721-5242	75805
	LIN, AERIE (858) 707-4000	75950	LIN, AERIE (858) 707-4000	75950
	PETRICHENKO, SOPHIA (469) 337-0510	75998	PETRICHENKO, SOPHIA (469) 337-0510	75998
	NI, INZER (212) 849-3044	76047	NI, INZER (212) 849-3044	76047
	COX, TYLER (415) 217-3516	76130	COX, TYLER (415) 217-3516	76130
	HADLEY, MITCHELL (212) 849-3013	76238	HADLEY, MITCHELL (212) 849-3013	76238
	COHEN, DAVID (949) 760-0404	76314	COHEN, DAVID (949) 760-0404	76314
	CARTER, SPENCER (949) 760-0404	76416	CARTER, SPENCER (949) 760-0404	76416
	HUGHES, DANIEL (858) 707-4000	76592	HUGHES, DANIEL (858) 707-4000	76592
	CHOI, CHARLES (718) 807-5825	76821	CHOI, CHARLES (718) 807-5825	76821
	CULBERTSON, JUSTIN (202) 640-6400	77014	CULBERTSON, JUSTIN (202) 640-6400	77014
	JOHNSON, BRYAN (415) 954-4114	77244	JOHNSON, BRYAN (415) 954-4114	77244
	SMITH, KYLE (802) 448-6048	77250	SMITH, KYLE (802) 448-6048	77250
	RADTKE, PAIGE (949) 760-0404	77396	RADTKE, PAIGE (949) 760-0404	77396
	MCINTYRE, ALISTAIR (858) 707-4102	77474	MCINTYRE, ALISTAIR (858) 707-4102	77474
	COCKRIEL, SAMUEL	77499	COCKRIEL, SAMUEL	77499

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KOWALLIS, KARL (703) 862-5375	77503	KOWALLIS, KARL (703) 862-5375	77503
PENN, BRITTANY (949) 760-0404	77509	PENN, BRITTANY (949) 760-0404	77509
REEVES, NATHAN (206) 405-2000	77806	REEVES, NATHAN (206) 405-2000	77806
MESSICK, ZACHARY (858) 707-4000	77839	MESSICK, ZACHARY (858) 707-4000	77839
PIYANAN, SMITH (212) 849-3000	78065	PIYANAN, SMITH (212) 849-3000	78065
RAMSEY, RHETT (949) 721-2932	78415	RAMSEY, RHETT (949) 721-2932	78415
CRANDELL, DOUGLAS (858) 707-4253	78566	CRANDELL, DOUGLAS (858) 707-4253	78566
FLYNN, BRIAN (858) 707-4187	78620	FLYNN, BRIAN (858) 707-4187	78620
LEWIS, CHRISTOPHER (202) 640-6400	79031	LEWIS, CHRISTOPHER (202) 640-6400	79031
WANG, XIAOYAN (949) 760-0404	79046	WANG, XIAOYAN (949) 760-0404	79046
LADDARAN, LINDSAY (949) 721-2893	79108	LADDARAN, LINDSAY (949) 721-2893	79108
CAPPELLI, PAIGE (202) 640-6409	79142	CAPPELLI, PAIGE (202) 640-6409	79142
FRIEDMAN, SERAH (310) 825-1097	79146	FRIEDMAN, SERAH (310) 825-1097	79146
LOADER, JOSHUA (858) 707-4105	79308	LOADER, JOSHUA (858) 707-4105	79308
MCNEILL, KENNETH (802) 770-4473	79404	MCNEILL, KENNETH (802) 770-4473	79404

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	MARTIN DEL CAMPO, JOSE (949) 721-5340	79610	MARTIN DEL CAMPO, JOSE (949) 721-5340	79610
	KIANG, DANIEL (949) 760-0404	79631	KIANG, DANIEL (949) 760-0404	79631
	WITTGROVE, ERIC (415) 217-3515	79683	WITTGROVE, ERIC (415) 217-3515	79683
	ZARGARI, NIMA (949) 760-0404	79740	ZARGARI, NIMA (949) 760-0404	79740
	CARDINAL, ERIN (216) 346-7243	79744	CARDINAL, ERIN (216) 346-7243	79744
	MITTELSTEIN, DANIEL (949) 760-0404	79750	MITTELSTEIN, DANIEL (949) 760-0404	79750
	ALLENDORPH, JANET (858) 707-4000	79783	ALLENDORPH, JANET (858) 707-4000	79783
	SIREK, CHARLES (949) 760-0404	79806	SIREK, CHARLES (949) 760-0404	79806
	BOETTCHER, CHRISTIAN (949) 721-2866	80009	BOETTCHER, CHRISTIAN (949) 721-2866	80009
	KOZIOL, LUKASZ (212) 849-3049	80087	KOZIOL, LUKASZ (212) 849-3049	80087
	TRUJILLO, NATHANIEL (415) 217-8394	80137	TRUJILLO, NATHANIEL (415) 217-8394	80137
	KINGERY, BRIANNE (760) 484-1676	80282	KINGERY, BRIANNE (760) 484-1676	80282
	MORALES, ASHLEY (858) 707-4022	80326	MORALES, ASHLEY (858) 707-4022	80326
	MUNCHINSKY, GREGORY (858) 707-4000	80623	MUNCHINSKY, GREGORY (858) 707-4000	80623
	WILLIS, TIMOTHY	80830	WILLIS, TIMOTHY	80830

(000) 101 1110	23487	(000) 707 1110	
JANICKI, SUSAN (946) 760-0404	80915	JANICKI, SUSAN (946) 760-0404	80915
MINNICK, PHILLIP (858) 707-4000	81223	MINNICK, PHILLIP (858) 707-4000	81223
THEAM, JUSTIN (949) 760-0404	81888	THEAM, JUSTIN (949) 760-0404	81888
RUSH, STACY (646) 575-6066	L1081	RUSH, STACY (646) 575-6066	L1081
MUNCHINSKY, GREGORY (Not Active)	L1089	MUNCHINSKY, GREGORY (Not Active)	L1089
FUJIWARA, TOMOHISA (Not Active)	L1188	FUJIWARA, TOMOHISA (Not Active)	L1188
HIRAI, YUSUKE (Not Active)	L1334	HIRAI, YUSUKE (Not Active)	L1334

# **EXHIBIT 30**

# THIS EXHIBIT HAS BEEN REDACTED IN ITS ENTIRETY